

## **SERAP: promoting transparency and respect for socio-economic rights**

### **Introduction from the Executive Director, SERAP**

The Socio-Economic Rights and Accountability Project (SERAP) was created in 2004 and registered as a non-governmental, non-profit organization under Nigerian laws.

Recognising the unexplored potential of international human rights law for increasing transparency, accountability and protection of economic and social rights in Nigeria, SERAP was created to promote these principles and values. The organization aims to use human rights law to encourage the government and others to address developmental and human rights challenges such as corruption, poverty, inequality and discrimination.

In the 9 years that have followed, we have worked to hold the government to account through the framework of human rights and anti-corruption laws and standards. We have continued to offer free legal advice and services for victims of corruption and economic and social rights. We help those whose economic and social rights are violated to obtain redress.

This document highlights some of the ways in which SERAP, in line with its founding vision, has helped to advance transparency, accountability and respect for economic and social rights through other means such as media advocacy, public impact and strategic litigation, capacity building, institutional building, and education and awareness. We also work very closely with many partners—government and non-governmental organizations, notably the Economic and Financial Crime Commission (EFCC), the Independent Corrupt Practices and Other Offences Commission (ICPC), and International Commission of Jurists (ICJ).

Through our public impact and strategic litigation efforts we regularly bring cases before Nigerian courts, ECOWAS Court, African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights which raise issues of fundamental importance in human rights and anticorruption laws and standards, and potentially can help to influence positive legal reforms, policy development jurisprudence or shape public opinion.

Our litigation work benefits hugely from the increasing list of our volunteers—lawyers and non-lawyers alike—and through litigation partnership including with international NGOs such as INTERIGHTS, International Commission of Jurists, Amnesty International and the UNCAC Coalition.

SERAP is also a key member of the UNCAC Coalition, which is a global network of over 310 civil society organisations (CSOs) in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC). Established in August 2006, it mobilises civil society action for UNCAC at international, regional and national levels.

On the recommendation of the DFID, SERAP was nominated for the UN civil society award in 2008. SERAP was also nominated for the Ford Foundation *Jubilee* Transparency Award for 2011. This document also highlights below some of the achievements of the past 9 years as well as pointing to challenges and opportunities for the future. It provides an opportunity to reflect on some of the momentous events which have shaped our activities during this period. It is also an occasion to thank our many supporters, partners and friends who have shared our work with us for many years.

Adetokunbo Mumuni

Executive Director,

SERAP

### **Public impact and strategic litigation**

Over the years, public impact and strategic litigation have become a major part of our work. Our public interest litigation work is based on the need to use law to support larger human rights struggles, and as an important tool of social change.

Through research and consultations with our team of volunteers and staff counsel and other stakeholders we identify and pursue cases on critical human rights anti-corruption issues which if successful are likely to have a high impact nationally and regionally.

While SERAP aims to secure a legal victory whenever litigation is undertaken, the organisation is also highly aware of the role of the litigation process beyond the orders made in court judgments.

Apart from affording victims an effective remedy and redress, successful litigation can establish important legal precedents or effect changes in legislation, policy or practice. It can also positively influence public opinion. Any decision to litigate is based on defined case selection criteria, our own resources and expertise. Sometimes, outside experts are consulted to determine the potential for success of any particular case or research comparative jurisprudence on similar issues.

Our litigation efforts go beyond filing and arguing cases in court to researching and filing a third party or *amicus curiae* briefs. We highlight below some of the cases we have filed and argued before national and regional courts in the years. These cases illustrate the breadth of our work and the durable effects that public impact and strategic litigation can have in promoting transparency, and accountability and full respect for human rights in Nigeria.

### ***SERAP v Nigeria***

The case was filed in 2009 against the Federal Government of Nigeria and six oil companies over alleged violation of human rights and associated oil pollution in the Niger Delta. Specifically, SERAP alleged: "Violations of the right to an adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and healthy environment; and to

economic and social development – as a consequence of: the impact of oil-related pollution and environmental damage on agriculture and fisheries.”

SERAP also alleged “oil spills and waste materials polluting water used for drinking and other domestic purposes; failure to secure the underlying determinants of health, including a healthy environment, and failure to enforce laws and regulations to protect the environment and prevent pollution.”

In a ground-breaking judgment delivered in December 2012, the Court unanimously found the Nigerian government responsible for abuses by oil companies and makes it clear that the government must hold the companies and other perpetrators to account.

The Court also found that Nigeria violated articles 21 (on the right to natural wealth and resources) and 24 (on the right to a general satisfactory environment) of the African Charter on Human and Peoples’ Rights by failing to protect the Niger Delta and its people from the operations of oil companies that have for many years devastated the region.

According to the Court, the right to food and social life of the people of Niger Delta was violated by destroying their environment, and thus destroying their opportunity to earn a living and enjoy a healthy and adequate standard of living. The Court also said that both the government and the oil companies violate the human and cultural rights of the people in the region.

The Court ruled that the government’s failure to enact effective laws and establish effective institutions to regulate the activities of the companies coupled with its failure to bring perpetrators of pollution “to book” amount to a breach of Nigeria’s international human rights obligations and commitments.

The Court emphasized that “the quality of life of people is determined by the quality of the environment. But the government has failed in its duty to maintain a general satisfactory environment conducive to the development of the Niger Delta region”.

Amnesty International and Socio-Economic Rights and Accountability Project (SERAP) have issued a joint statement describing the ECOWAS Court of Justice judgment as a “key moment in holding governments and companies to account for pollution.”

### ***SERAP v Nigeria***

This case was filed in 2007 before the ECOWAS Court of Justice in Abuja, arguing that massive corruption in the Universal Basic Education Commission (UBEC) amounted to a denial of the right to a free, quality and compulsory education for Nigerian children. In a landmark judgment delivered in November 2010, the ECOWAS Court in suit no: ECW/CCJ/APP/12/7 upheld SERAP’s submission and declared that the Nigerian government has a legal responsibility to provide as of right, free, quality and compulsory basic education to every Nigerian child.

The suit was filed on behalf of SERAP by Femi Falana, SAN.

The case followed information SERAP received from whistleblowers on the allegations of corruption in the UBEC. After that, SERAP staff and consultants successfully investigated and obtained critical information on massive corruption in the UBE boards including in Benue, Borno, Kebbi, Nasarawa, Sokoto, Yobe, Plateau, Cross River, and Bayelsa. Following the visits made and information gathered, SERAP then petitioned the Independent Corrupt Practices and Other Related Offences Commission (ICPC). The ICPC conducted further investigations on the basis of SERAP's petition and produced a report. This initiative led to the recovery by the ICPC of over N3 billion (meant for the education of disadvantaged and disabled children) misappropriated by top officials of the UBEC.

The ECOWAS Court in its judgment stated that there was prima facie evidence of embezzlement of funds on the basis of the reports of the ICPC. The Court also stated that while steps should be taken to recover funds and/or prosecute the suspects, the Nigerian government should provide the funds necessary to cover the shortfall in order to avoid denying any of its people the right to education. The court also asked the government to ensure that the right to education is not undermined by corruption. The court held that the UBEC has the responsibility to ensure that funds disbursed for basic education are properly used for this purpose.

This is the first time that a sub-regional human rights court would consider corruption as a violation of human rights.

The case has been widely covered in the media. The respectable ThisDay newspaper in its editorial of 16 March 2008 said *"We must thank the Socio-Economic Rights and Accountability Project (S.E.R.A.P), a non-governmental organisation for initiating the petition that led to the ICPC investigation in the first place. This is the kind of national duty expected of our Rights Groups. It is a great service to the nation requiring a presidential recognition."*

And the Sun newspaper in its editorial of March 20 2008 said *"We also commend the pro-active Socio-Economic Rights and Accountability Project (SERAP) which petitioned the ICPC in the first instance for their patriotic act."* SERAP continues to monitor the spending by the UBEC and to advocate for transparency and accountability in the education sector.

Former President of the Nigerian Bar Association J.B. Daudu said of the ground-breaking ECOWAS Court judgment: *"I doff my hat to Femi Falana and SERAP for their timely intervention in the Education Sector of this Country. It is the best Christmas present ever presented to Nigerians. The NBA believes in the use of Public Interest Litigation to compel Government authorities' compliance with constitutional and statutory provisions and duties. There can be no other way in a democratic society to ensure compliance with statutory directives that the resort to constitutional measures of redress. That is why Government must always respect the decisions of peaceful democratic institutions like our Courts when it is handed down. The alternative to disobedience is to encourage people to contemplate extra-judicial measures for the purpose of seeking redress. We urge Government to forthwith set up the machinery to obey the ECOWAS Court judgment and*

*implement the terms of that judgment to the letter. No government is above the law. Any attempt to sideline the decision of Courts will be resisted by the NBA. This is the only way to secure Peace, Order and good Government in Nigeria."*

### ***SERAP v Nigeria***

Following recent discovery of massive and systemic corruption by public officials, SERAP through its lawyer Mr Femi Falana, SAN, and former President West African Bar Association petitioned the International Criminal Court's Prosecutor in The Hague in 2008 asking him to use "his position and powers to examine and investigate whether the systemic/grand corruption in Nigeria amounts to a crime against humanity within the jurisdiction of the ICC, and to prevail on the Nigerian government to fulfil its obligations to effectively and fairly investigate and prosecute all allegations of grand corruption since 1985". The petition was widely covered in the media. The petition is still pending before the ICC.

### ***SERAP v Nigeria***

Following the discovery that \$16 billion budgeted for supply of electricity to millions of Nigerians was stolen or mismanaged, SERAP in 2009 sued the government in court "over the failure to effectively tackle corruption in the power sector, which has resulted in the theft of \$16b meant for the power projects, and the denial of access to reliable and uninterrupted electricity services for majority of Nigerians," arguing that "without access to improved quality and quantity of electricity services, Nigeria cannot achieve the Millennium Development Goals (MDGs), including eradicating extreme poverty and hunger; achieving universal primary education; reducing child mortality; combating HIV/AIDS, malaria, and other diseases." The case is pending before the court.

### ***SERAP v Nigeria***

In 2009, SERAP requested the Commissioner Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa to "urgently intervene to stop the Nigerian government from instigating the passage of a bill in the National Assembly, which aims to undermine the internationally recognized right to freedom of expression and press freedom in the country."

The petition was successful as the African Commission on Human and Peoples' Rights in Banjul, The Gambia ordered the Nigerian government to work with the National Assembly to ensure the immediate withdrawal of the anti-media bill initiated by Honourable Abike Dabiri Erewa of the House of Representatives.

The African Commission is a body charged with overseeing states parties' compliance with their obligations under the African Charter on Human and Peoples' Rights, which Nigeria has ratified. The African Commission's order dated 25 November 2009 and signed by Ms Tlakula states that, "The Special Rapporteur is concerned about reports of the proposed Nigerian Press Council and the

Practice of Journalism in Nigeria Bill 2009 (the Bill), before the National Assembly of the Federal Republic of Nigeria. This Bill will repeal the Nigerian Press Council Act of 1992.

### ***SERAP v Nigeria***

SERAP in 2009 dragged the Federal Government to the International Criminal Court at the Hague Netherlands requesting the then Mr Luis Moreno Ocampo, Prosecutor of the ICC to use his position "to investigate allegations of unlawful killing of at least 326 people and perpetration of other crimes under international law during the violence this month in Jos, Plateau State of Nigeria; and the reports that the military and police used excessive force against both Christians and Muslims in responding to the violence."

The petition has received favourable consideration as the ICC has decided to hear SERAP's complaint.

In the response to SERAP's petition, the ICC sent a letter dated 8 February 2010, and signed by M.P. Dillon, Head of Information and Evidence Unit of the Office of the Prosecutor, to the effect that, "The Office of the Prosecutor of the International Criminal Court acknowledges receipt of your communication. This communication has been duly entered in the Communications Register of the Office. We will give consideration to this communication, as appropriate, in accordance with the provisions of the Rome Statute of the International Criminal Court. As soon as a decision is reached, we will inform you in writing." Earlier, in a petition dated 29 January, 2010 and sent to Mr Ocampo, SERAP said that "Nigeria is a state party to the Rome Statute of the International Criminal Court, and deposited its instrument of ratification on 27 September 2001.

As a result of this case, the Federal Government (through the office of Director Legal Services Ministry of Defence) has written to SERAP inviting the organization to the public hearing of the "Board of Inquiry on Jos Crisis and the activities of the JTF at the Special Task Force (STF) Headquarters. The sitting was sequel to your petition titled: 'International Criminal Court to investigate recurring crisis in Plateau State, which has been forwarded from the ICC Prosecutor's office to Nigeria."

### ***SERAP & others v Nigeria***

This suit filed in 2010 before the Federal High Court Abuja sought official publication of report on missing \$12.4 billion oil windfall. The suit was filed by SERAP and five other NGOs.

The plaintiffs are asking the court to make an order compelling the Central Bank of Nigeria and the Attorney General of the Federation to publish detailed accounts relating to the spending of the colossal sum of money between 1988 and 1994. They also seek for an order of the court compelling the respondents to diligently and effectively bring to justice anyone suspected of corruption and mismanagement of the 12.4 billion dollars oil windfall.

They also want an order directing the respondents to provide adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition to millions of Nigerians that have been denied their human rights as a result of the respondents' failure and/or negligence to ensure transparency and accountability in the spending of \$12.4 billion oil windfall between 1988 and 1994.

According to the plaintiffs, "The need for information regarding the spending of \$12.4 billion oil windfall is important to promote transparency and accountability in the management of public resources and to fulfil Nigeria's international obligations to promote the development of the country. Access to information of this nature is especially important in this country, which is struggling to establish the rule of law and democracy in the face of underdevelopment, poverty, illiteracy and diseases. The right of access to information is also crucial to the realisation of all other human rights, including the peoples' right to their natural wealth and resources."

The plaintiffs also argued that: "The diversion and/or mismanagement of the \$12.4 billion oil windfall is a violation of Nigerians' right to natural resources and wealth and to economic development, as recognised and guaranteed by 21 and 22 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act). Under the African Charter, the Nigerian government has a legal responsibility to utilise the natural resources of the country so as to benefit the whole people. Just as the people of every sovereign state have a permanent right to choose their form of government, so the people are entitled to insist that the natural resources of the nation be exploited in the interest of the people."

Hope for a definite legal pronouncement and accountability for the missing \$12.4 billion oil windfall was recently kept alive as the Federal High Court in Abuja finally adjourned the suit to 23 November 2012 for judgment.

This development followed the hearing of arguments and re-adoption of written addresses by lawyers to the parties in September 2012 before Hon Justice Gabriel Kolawole.

At the hearing, the Federal Government insisted that the enactment by the former Chief Justice of Nigeria Idris Legbo Kutigi of the Fundamental Rights (Enforcement Procedure) Rules 2009 "exceeded his Constitutional powers by liberalising the rules on locus standi, permitting public impact litigation, and allowing the inclusion of the African Charter on Human and Peoples' Rights in the Rules."

The government also said that it could not find the Okigbo report, and had no duty to render account on the spending of the accrued revenue.

It was also argued for the government that "only the AGF as a defender of public interest has the right to seek information on the spending of the \$12.4 billion oil windfall," and that the Plaintiffs have no such right. The Plaintiffs countered by saying that it was "the failure of the AGF to carry

out his duty in this respect," that prompted their legal action against the government in the first place.

It would be recalled that the case initially set down for judgment on Thursday 24 July 2011 has suffered several adjournments. The case was previously adjourned to 16 March 2012 for re-adoption of written addresses but was not heard as the court did not sit.

When the matter first came up for judgment, the trial judge, Justice Gabriel Kolawole, said the judgment was not yet ready to be delivered. According to the judge then, "the judgment is not yet ready. I have to give priority to criminal cases which are very important. I have a backlog of judgments which are older than this case. I regret the delay." The judge subsequently adjourned the case to October 21 2011 to deliver the judgment.

However, when the case came up on 21 October 2011 it was again adjourned indefinitely because the court did not sit. It was at this point that the suit became affected by the provisions of Section 194 (1) of the 1999 Constitution (as amended), which provides that, "Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."

Judgment was eventually delivered in the suit in November 2012, and the Justice Kolawole dismissed the suit.

On the one hand, the court held that the plaintiffs lacked locus standi to bring the case. On the other hand, the court stated that the plaintiffs should not be seen as busy bodies but patriotic citizens. The court even praised 'the courage and dedication of SERAP in instituting the matter calling the group a serious minded organisation desirous of ridding Nigeria of all forms of corruption.' But SERAP believe that these statements are contradictory, and is in the process of challenging the decision before the Court of Appeal.

### ***SERAP v Nigeria***

This suit filed in 2011 before the Federal High Court in Ikeja alleged the "failure of the government to release information and documents on the spending of recovered stolen funds." In the case, SERAP argued that "the disclosure of the information requested will give the general public a true picture and a clear understanding of how the spending of recovered public stolen funds have impacted on the lives of the poor and indigent and other disadvantaged Nigerians."

SERAP has successfully obtained the court's permission to sue for the release of documents on the spending of recovered stolen funds since the return of civilian rule in 1999. The order has now cleared the way for SERAP to advance its case against the government. The order for leave for an order of mandamus was granted against the Accountant-General of the Federation, Jonah Otunla,



and the Attorney-General of the Federation, Mohammed Adoke. The case, which is seeking several declaratory reliefs, is still pending in court.

Prof. Dr. Peter Eigen, founder of Transparency International hailed SERAP for instituting the case and for obtaining the court's order when he wrote: "Excellent work, SERAP! Please keep me informed of further development in the case."

### ***SERAP v Nigeria***

This suit filed in 2011 before the Federal High Court Ikeja seeks disclosure of the details and basis of government's spending on fuel subsidy for 2011. SERAP is requesting the court to grant several declaratory reliefs.

SERAP has successfully obtained the court's permission to sue Petroleum Products Pricing Regulatory Agency, PPPRA for the release of the basis for oil subsidy spending for 2011: The order granted by Justice S. Adah, followed the hearing of argument from SERAP's counsel on the application for leave for an order of mandamus against the Petroleum Products Pricing Regulatory Agency, PPPRA, the Attorney General of the Federation and Minister of Justice, Mohammed Adoke, and the Minister of Petroleum Resources, Diezani Alison-Madueke. The case is pending in court.

### ***SERAP v Government of Oyo State, South-West Nigeria***

SERAP in 2011 sued Oyo State Governor before the High Court of Oyo State over failure to account for spending on primary education. The suit was filed on behalf of SERAP by Tayo Oyetibo, SAN.

This followed the organization's request in June 2011 made under the Freedom of Information Act 2011 for "up-to-date information and documents on the spending relating to primary education in the state, covering the period from 2005 when the first budget was released for the Universal Basic Education Commission (UBEC) program in the state." SERAP had made similar request to the governors of Enugu, Kaduna and Rivers states.

In this case, SERAP argued that "the power or discretion to refuse to give access to information requested for cannot be exercised *in vacuo*. Such a power or discretion must be provided for by the FOI Act itself. This means, therefore, that a request for information can only be denied or turned down if the information requested is one which is exempted from disclosure under the provisions of the FOI Act. In the case at hand, the information requested relates strictly to the receipt and expenditure of public funds on primary education in the state." This suit seeks to affirm the national-wide application of the FoI Act, not only to the federal government but also the state governments.

The State High Court has dismissed the case on technical grounds: that SERAP did not possess the locus as the organization was not directly affected by the case, and that SERAP did not disclose the purpose for which the information requested was needed. SERAP is now processing an appeal against the decision before the Court of Appeal.

### ***SERAP v Central Bank of Nigeria***

SERAP sued Central Bank of Nigeria in 2012 over failure to disclose authorization of spending of government subsidy for 2011. In the case, SERAP alleged failure to release information and documents on the authorization by the CBN of over N1.26 trillion as subsidy for 2011. The suit filed at the Federal High Court Ikeja followed a Freedom of Information request by SERAP. SERAP is arguing that under the FOI Act, it has the right to request for or gain access to information which is in the custody or possession of any public official, agency or institution. The information being sought relates to the spending on fuel 'subsidy' in 2011 and in particular the authorization of the sum of N1.26 trillion paid by the Central Bank of Nigeria. SERAP is also making some declaratory reliefs. The case is pending in court.

### ***SERAP v Nigeria***

On the celebration of the UN Water Day on 22 March 2009, SERAP and Lateef Olawale Yussuf, (a Nigerian tax payer and one affected by the subject matter of the suit) sued the Federal Government over its "failure to provide access to safe and affordable water and sanitation services for about 80 million of Nigeria's estimated 140 million people," saying that "clean water is lacking, activities like washing of hands, cleaning of food, brushing of teeth often taken for granted in more organized societies may be disregarded because people are forced to make a choice to ration the little water, if any, that they are able to scoop up."

The Plaintiffs stated that, "The right to water is a fundamental human right, and the failure and/or negligence of the Defendants to respect, protect, promote and fulfill the right of millions of Nigerians to safe and affordable water and sanitation services have continued to contribute to the violations of other human rights, including the right to equal treatment; the right to a general satisfactory environment; the right to health; the right to life; and the right to human dignity and security. Without access to improved and safe water supply Nigeria cannot achieve the Millennium Development Goals (MDGs), including eradicating extreme poverty and hunger; and ensuring environmental sustainability." The case is pending before the court.

### ***SERAP v Libya***

Following SERAP's petition before the African Commission on Human and Peoples' Rights in 2009, the Commission ordered the Libyan authorities to stop the execution of Nigerians on death row in Libya, pending the final determination of the case brought by SERAP before the African Commission on Human and Peoples' Rights, in Banjul, The Gambia.

The case was filed on behalf of SERAP by Femi Falana, SAN.

The petition was successful as Libya immediately suspended the execution of Nigerians on death row in that country.

The information on the compliance by Libya with the Commission's provisional measures was contained in a paper titled *Debating the death penalty—experiences from different regions*, dated

25 September 2009 and presented by a member of the African Commission, Ms Catherine Modupe Atoki at the International Peace Institute in New York in October 2009. In the paper, Ms Atoki said that *"Early September this year, a communication was filed with the African Commission against Libya by a Nigerian Non-Governmental Organization, Socio-Economic Rights and Accountability Project (SERAP). It alleged that over 200 Nigerians are on death row for offences ranging from immigration, murder, drug and armed robbery. The Commission requested from the President of Libya a provisional measure to stay execution pending the determination of the communication. Happily, the President obliged and for now there is a hold on the execution of the convicted persons."*

SERAP had alleged "serious, persistent and irreparable violations of the Complainants' rights to life; to communicate with their embassy or consular post; to competent and effective legal representation; to trial within a reasonable time or to a release; to trial by a competent, independent and impartial tribunal established by law; to the presumption of innocence; to an interpreter and to translation; to appeal to an independent and impartial tribunal, and fair trial guarantees during appeals."

### ***SERAP v Gambia***

SERAP and the Centre for Defence of Human Rights and Democracy in Africa (CDHRDA) in 2009 asked the Community Court of Justice of the Economic Community of West African States (ECOWAS) in Abuja to stop the Government of Gambia and the ECOWAS Commission from amending the laws concerning the jurisdiction and access to the Community Court.

The Gambian proposals, which were submitted to the ECOWAS Commission and discussed by the Commission's experts in Abuja call for the inclusion of a requirement for a petition for violation of human rights to the Court to exhaust domestic remedies before the matter is taken to the Community Court of Justice; and to limit the jurisdiction of the Court with regard to human rights treaties already ratified by the Member State before the Court. The proposals also called for amendment of Article 76(2) of the Revised ECOWAS Treaty to create an appeals procedure for all decisions of the Community Court.

The case was filed on behalf of the organization by Femi Falana, SAN.

The groups challenged the legality and propriety of the Gambian proposals. The proposals were subsequently rejected by both the ECOWAS experts and the ECOWAS Heads of Government.

### ***SERAP v Nigeria***

SERAP in 2012 filed a request before the African Court on Human and Peoples' Rights sitting in Arusha, Tanzania, asking the court to "consider the effects of corruption on the poverty level in Nigeria, and whether the rising and systemic poverty violates specific human rights under the African Charter on Human and Peoples' Rights."

SERAP is asking the court "to assess the legal and human rights consequences of poverty, including whether increased poverty breaches the right to equality and non-discrimination, right of the people to socio-economic development, and their right to natural wealth and resources."

SERAP is also asking the court to consider the "disclosure by the Statistician-General of the Federation and CEO of the National Bureau of Statistics, NBS, Yemi Kale that 112.519 million Nigerians, that is around seventy per-cent of the country's estimated 163 million population, live in relative poverty conditions."

SERAP said: "The question for determination has been framed in terms of law, and raises problem of human rights law as established by the African Charter. The request by its very nature is susceptible of a reply based on law; indeed it is scarcely susceptible of a reply otherwise than on the basis of law. As such, the request is not affected by the provisions of article 34(6) of the African Protocol, requiring declaration by States as a condition of access to the court." The case is pending for hearing before the court.

### ***SERAP and others v The Gambia***

SERAP and two Nigerians on death row in the Gambia in 2012 filed a case before the ECOWAS Court asking the court to urgently stop their impending execution. The Nigerians involved in the case are: Michael Ifunanya and Stanley Agbaeze.

The suit was filed on behalf of SERAP by Femi Falana, SAN.

In the case, SERAP and the Nigerians are alleging that the threat of execution while they (2nd and 3rd plaintiffs) have been denied the right to appeal "violates their human rights to right life; to due process of law; to access to justice and judicial independence; to a fair hearing; to appeal, and to effective remedy."

According to the plaintiffs, "The 2nd and 3rd plaintiffs are among the 48 people on death row in The Gambia. Without allowing them to exhaust their right of appeal, the Gambian government has threatened the Plaintiffs on or about 15 August 2012 to execute them and all other persons on death row in The Gambia."

It was also stated that "The Gambian government has threatened to carry out the secret and illegal execution of the Nigerians and other remaining persons on death row by September 2012. But the Gambian parliament has not passed any memorandum endorsing the execution of the Nigerians, as required by Section 81 of the constitution of the Gambia."

Following the filing of the case and international pressure, the Gambian government has now suspended the execution of the Nigerians and others on death row in their country.

### ***SERAP and another v Nigeria***

SERAP together with the Women Advocates and Research and Documentation Center (WARDC) in 2012 filed a case against the Federal Government at the Federal High Court, Ikeja, asking the

court for leave “to apply for judicial relief and to seek an order of mandamus directing and or compelling the government to disclose and make available up-to-date information on government/public spending relating to maternal death prevention for the past five years.”

Joined as Defendants in the suit are the Attorney General of the Federation and Minister of Justice, Muhammed Adoke and the Minister of Health, Professor Onyebuchi Chukwu.

The suit followed a Freedom of Information request by the groups dated August 13, 2012.

SERAP and WARDC are arguing that “under the FOI, they have the right to request for or gain access to information which is in the custody or possession of any public official, agency or institution.”

In their request, the groups expressed “serious concerns about the worsening rate of maternal mortality in Nigeria, which is one of the highest ratios globally. Women in rural areas share a considerable percentage of this ratio. The main cause of maternal mortality suffered by the vulnerable sectors of the population is the lack of access of pregnant women to adequate, affordable and accessible healthcare services.”

They also said that, “This situation constitutes a violation of the human rights such as the right to life and the right to health guaranteed by the African Charter on Human and Peoples’ Rights which Nigeria has ratified and incorporated as national law through the Ratification and Enforcement Act (Cap A9) Laws of the Federation of Nigeria 2004.”

### **Training magistrates and support staff on anti-corruption laws and standards**

This is another core area of our work to improve the justice delivery system in the country in terms of it being corruption-free and accessible to the citizens.

With the support of the Royal Netherlands Embassy in Abuja, SERAP successfully carried out anti-corruption and ethics training and sensitisation seminars for 200 magistrates and support staff in Lagos State. SERAP has also researched, drafted and produced a 14-point programme for promoting ethics and integrity at magistrates’ courts level. This publication has been widely distributed among magistrates and support staff in Lagos State, and among the general public.

Another element of our magistrate court anti-corruption project is media roundtable where lawyers, judges, parliamentarians, civil society leaders and other stakeholders discuss problem of corruption in the justice delivery system and propose strategies for addressing the problem.

At one of the several media roundtables that have been organized, the former Chief Justice of Nigeria (CJN), Justice Dahiru Musdapher was invited as a special guest of honour, where he addressed the issues of ethics and integrity at the Magistrate court level.

Honourable Justice Musdapher said the only way to safeguard the nation's fledgling democracy is for the judicial system to be politically neutral to protect the judicial system against undue intervention and corrupt practices.

Justice Musdapher noted that "it is no doubt that a corrupt Judge is more harmful than man who runs amok with a dagger in a crowded street."

He noted that things are not faring well in the judiciary at the state level; where he said the executive arm of government suppresses the judiciary and almost makes them subservient. It is regrettable that some state chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some judges conduct themselves), it does not invariably follow that a distinct arm of government should, because of the action of a few, be treated in a manner that compromises its independence and its integrity."

Justice Musdapher also noted that, "Sadly, the judiciary in several states still goes cap in hand to the executive begging for funds that should naturally come to it. By section 162(9) of the constitution, any amount standing to the credit of the judiciary in the Federation Account is paid directly to the NJC for disbursement to the heads of courts including those at the state level. However, a significant part of the funding requirements of state judiciaries especially in the area of the provision of infrastructure and welfare of magistrates and other lower court judges remain the responsibilities of state governments."

According to him, "Restoring public confidence in the judicial system is our number one priority. We have therefore taken a number of initiatives to make this a reality. We established a Judicial Reform Committee, headed by former Chief Justice of Nigeria, CJN, Justice Muhammadu Uwais to explore how best to fortify the independence of the judiciary, curb judicial corruption and especially insulate judges from political manipulations and control. The committee has since submitted its report and has made very useful recommendations. The aim is to set out the Judiciary on a path of renewal so as to restore the integrity and dignity of the Judiciary."

Femi Falana, SAN also attended and made a presentation at one of our media roundtables. He noted that Nigerians must be ready to protect the integrity of the courts as the last hope of the common man by testing the law through the court whenever their rights were abused.

He noted that the magistrate court as a court of first instance has so much to do in the dispensation of justice and the protection of the rule of law.

He decried the poor working conditions of magistrates across the country and called on the government at all levels and the Judicial Service Commission to provide a more conducive atmosphere for magistrates to function optimally.

At one of our media roundtables, former Chairman of the Judiciary and Human Rights Committee of the Lagos House of Assembly, Mr Babatunde Ogala noted the need for magistrate courts to be corrupt-free to deliver quality judgments for the common masses who appear before them.

Also, at our media roundtable on corruption and public service delivery: the real victims organized in 2009 in collaboration with the National Endowment for Democracy, (NED) USA, the Guest Speaker General R. O. Ishola Williams (Retired), Chairman, Transparency International in Nigeria delivered a paper on the theme of the roundtable.

The roundtable brought together a group of leading human rights activists and lawyers, anti-corruption activists, academia, media practitioners and journalists, diplomats, government officials, inter-governmental organisations and the private sector with experience in the fields.

### **Advocacy, Education and Campaigning**

Our organization also engages in advocacy, education and campaigning as tool of empowering the citizens about their economic and social rights and to hold the government and public officials accountable for the performance of their public trust and functions.

In 2004, SERAP petitioned Code of Conduct Bureau demanding strict enforcement of Constitutional and Statutory provisions prohibiting public officials from maintaining or operating foreign bank accounts. SERAP asked the Bureau to publish the names of officials holding foreign accounts, and the Bureau has revealed some names of governors maintaining and operating such accounts. The petition received extensive media coverage, including being used as a front page story in The Punch newspaper. There were also some editorials on the matter.

Following SERAP's petition in 2006, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) commenced investigation into allegations of corruption in the Paris Club debt cancellation agreement. SERAP's petition had alleged that a high-ranking official in the former Obasanjo government collected N60 billion as a commission in the transaction.

In 2007, SERAP, following lack of access to affordable and quality healthcare for millions of Nigerians, launched a public petition campaign on access to healthcare for poor women and children in Nigeria, a campaign that has received extensive media coverage and significant public support. The public petition campaign aims to put pressure on the Nigerian government to initiate and submit an executive bill on universal access to healthcare for poor women and children in Nigeria to the National Assembly. The public petition campaign has received significant support, including from Amnesty International (Netherlands); Messrs Femi Falana SAN; Olisa Agbakoba SAN and former President, Nigerian Bar Association (NBA); International Commission of Jurists (ICJ-Kenya); and the International Federation of Women Lawyers-Nigeria (FIDA).

SERAP has played (and continues to play) a key role in advancing the efforts to combat impunity for corruption through its extensive media work and advocacy. SERAP has made a case for

investigation and prosecution of allegations of corruption especially at the highest level. Our research and advocacy, and our leadership role among NGOs, is widely credited as having been vital to the progress made in this respect thus far.

In 2009, SERAP asked the Nigerian government to "swiftly and publicly commit to the ratification by his government of the new UN Optional Protocol to the International Covenant on Economic, Social and Cultural Rights."

The Protocol, adopted by the UN General Assembly without a vote on 10 December 2008 was opened for signatures on 24 September 2009. The Protocol would enable victims of violations of rights covered by the Covenant to file complaints to the Committee on Economic, Social and Cultural Rights, a body charged with overseeing the implementation of the Covenant.

In an open letter to the government dated 21 September 2009 SERAP stated that "The adoption of the Protocol reinforces the universality, indivisibility, interdependence and interrelatedness of all human rights and would contribute to the achievement of the Universal Declaration of Human Rights' promise of respect for all human rights."

In 2012, SERAP through its Volunteer Counsel, Alexander Sierck, who is Adjunct Professor at the Georgetown University Law Center, (where he teaches a course on international white collar crime) has urged the United States to establish a process for sharing compensation of proceeds from foreign bribes.

The petition urged the commission "to establish an efficient case-by-case process for the payment of some or all of US Foreign Corrupt Practices Act (FCPA) civil penalty and disgorging proceeds to or for the benefit of the victimised foreign government agency or the citizens of the affected foreign country like Nigeria". The commission was also urged to ask that civil society groups in the home country, or US-non-profit organisation, should be eligible to apply for such proceeds as well. In the alternative, it was suggested that the proceeds could be used for public benefit projects in the affected foreign country, subject to anti-corruption safeguards.

According to the petition, "At the moment, the civil penalty and disgorgement proceeds that companies agree to pay to resolve US FCPA investigations, are retained by the US government. Yet, procurement and investment agreements corrupted by foreign bribery, invariably lead to increased costs, not only in higher prices, but also in needlessly expanded and ultimately inefficient projects in the victimised societies. This has often been the case in Nigeria, where damage remedies are often elusive."

The US government has promised to look into the petition.

In a letter dated 25 April 2012, and signed by Robert S. Khuzami, Director SEC, to SERAP, the US SEC said there was no doubt that "corruption exacts an enormous toll, both human and economic,



across the world. Moreover, as the US Congress recognised when the FCPA was first enacted, corporate bribery is bad for business as it is fundamentally destructive of our free market system.”

The SEC also said that, “The question of identifying parties who suffer cognisable harm in connection with the securities law violations at issue in a given enforcement matter is driven by the facts and circumstances of that particular case. We appreciate your thoughtful submission, and will give appropriate consideration to your suggestions, guided by the Commission’s multi-prolonged mission, as well as the legal framework surrounding the federal securities laws.”

In 2012, the United States Securities and Exchange Commission (SEC) requested a meeting with SERAP “to discuss the implementation of our proposal to establish an efficient case-by-case process for the payment of some or all of US Foreign Corrupt Practices Act (FCPA) disgorgement proceeds for the benefit of the victimized foreign government agency or the citizens of the affected foreign country like Nigeria.”

Following the meeting, SERAP’s representative Professor Sierck was invited to the World Bank’s Stolen Asset Recovery (StAR) Initiative meeting, which he attended on April 5 and made contribution to discussion on how to enhance victims’ rights in anti-corruption investigations including restitution; and shared with the meeting SERAP’s proposal to SEC.

### **Legal reform and institutional building**

Another key area of our work is in the area of legal reform and institutional building. Among others, SERAP keenly pursues activities to improve the legal recognition of economic and social rights in Nigeria through constitutional and legal reform and judicial enforcement of those rights as recognized under international standards and treaties to which Nigeria is a state party.

In 2005, SERAP submitted a memorandum to the defunct National Political Reforms Conference (NPRC) making recommendations on the reform of the Code of Conduct Bureau to achieve greater effectiveness and independence in its work; on specific guarantee to individuals or groups on the right of access to information concerning the spending of the state; and on entrenchment and elevation of the status of economic and social rights to the level of enforceable fundamental human right in any new constitutions.

In 2010, SERAP (in collaboration with Wole Soyinka Centre for Investigative Journalism, Nigerian Bar Association, Nigerian Guild of Editors (NGE), Nigerian Medical Association (NMA), Women Empowerment and Legal Aid (WELA), Pan African Strategic and Policy Research Group (PANAFSTRAG), Women in Law and Development in Africa (WILDAF), Women Consortium of Nigeria, and Centre for Reproductive Rights, New York) launched a campaign to “ensure the inclusion in the Constitution of legally enforceable human rights such as such as environmental rights; the right to housing, to health care, to food, to water and to social security; the right of every child to basic nutrition, shelter, the rights of prisoners and persons deprived of their liberty to conditions of detention that are consistent with human dignity.”

Others who have signed on to the 'ESCR [Economic, Social and Cultural Rights] Campaign' are: senior lawyer and human rights activist, Femi Falana SAN, and Head, Department of Jurisprudence & International Law, University of Lagos, Professor Akin Oyeboode.

The signatories stated that, "We strongly believe that a simple vote, without food shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched."

The signatories also stated that, "We do not want freedom without bread, nor do we want bread without freedom. Nigeria must provide for all the fundamental rights and freedoms associated with a democratic society. We believe that human dignity, freedom and equality are denied those who have no food, clothing and shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights which are already recognized and guaranteed in the Nigerian Constitution."

The Campaign was initiated following a request by the Senate President seeking a presentation on the issue.

The Senate President has responded to our request. In a letter dated 24 March 2010, and signed by Arthur Ndiwe, Director of Protocol to the President of the Senate, Mr David Mark, stated that "the Special Adviser on Budget/Economic Affairs to the Senate President has been requested to receive your memorandum on the future of economic and social rights in the Constitution for necessary action."

In response to SERAP's petition in 2007 the Independent Corrupt Practices and Other Related Offences Commission (ICPC) launched an investigation into allegation that the N38 billion recovered from the funds looted by the late head of state, Gen. Sani Abacha was missing. In its petition, SERAP stated that "N38 billion of the N65 billion (\$500 million) recovered public funds stashed away in Swiss banks by the late Abacha could not be traced or might have been misused. Following SERAP's petition in 2008, the former Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Justice in Emmanuel Ayoola, decided to set up a panel, to investigate the purchase of vehicles at N2.3 billion by the House of Representatives. In a petition dated October 28, 2008, and sent to the ICPC Chairman, the organisation had asked the commission to "urgently begin a thorough and efficient investigation into allegations of corruption in the N2.3 billion vehicles purchased by the leadership of the House of Representatives, and to bring to justice suspected perpetrators and recover the stolen public funds." In response, the ICPC through its Resident Consultant on Media and Events, Folu Olamiti, stated that the anti-corruption agency has decided to investigate the matter based on the strength of SERAP's petition.

In 2007, SERAP with the support of the National Endowment for Democracy (NED) USA commissioned a consultant, Professor Edward Oyewo former dean of the Faculty of Law University

of Lagos to draft a bill to domesticate the UN Convention against Corruption, which has now been presented to the National Assembly. SERAP had organized a parliamentary dialogue on the issue and commissioned Professor Akin Oyebo of the Faculty of Law University of Lagos to present a paper on strategies for the domestication of the Convention in Nigeria.

In 2008, SERAP issued an open letter to the members of the National Assembly urging them to support domestication of the UN Convention against Corruption. The letter was widely covered in the media. In the letter, SERAP stated among others, that "the criminal code provisions relating to corruption are mostly outdated and very limited, and Nigerian anti-corruption laws do not sufficiently articulate provisions relating to recovery of Nigerian stolen money. Domesticating the UN Convention against Corruption and making it part of our national laws would help to address these problems and to improve the current anti-corruption laws."

### **Publications and information**

Since its establishment, SERAP has published several reports, legal briefings, memoranda, and commentaries in the media. The following are some of our publications.

- \*Citizens' Guide to the Independent Corrupt Practices and Other Related Offences Commission (ICPC)

- \*Opportunities and Prospects for the Legal Defence of Economic, Social and Cultural Rights before National and African Regional Courts: An Assessment

- \*14-Point Programme for Promotion of Transparency and Accountability at the Local Government Level

- \*Understanding the UN Convention against Corruption

- \*Understanding the Independent Corrupt Practices and Other Related Offences Commission

- \*Corruption and Economic, Social and Cultural Rights: The Role of the African Commission on Human and Peoples' Rights

- \*14-Point Programme for Promoting Ethics and Integrity at the Magistrate Court

- \*Compendium of Decisions on Social and Economic Rights in Nigeria

### **Public education and awareness**

SERAP also engages in public education and awareness about anti-corruption standards and institutions at the local government and community levels

With the support of Open Society Initiative for West Africa (OSIWA), SERAP in 2007 launched its local government anti-corruption public empowerment and sensitization project in three local government areas of Lagos State: Lagos Island East local government; Lagos Island local

government, and Ojo local government). The launch was chaired by Mr Femi Falana and the Secretary of Ojo local government was also in attendance. Representatives from the EFCC, ICPC, National Human Rights Commission, Transparency International, etc also attended the occasion. The event was well covered in the media. Under this project, SERAP has also published Understanding the Anti-Corruption Legislation written by SERAP's consultant, Professor Akin Oyeboode of the Faculty of Law University of Lagos, has been published and widely distributed.

SERAP believes that addressing local government level is critical to comprehensively tackling the endemic and ensuring effective management of Nigeria's natural resources.

Our investigations show that corruption at the local government level goes beyond outright theft of local resources, and often includes – bribing policemen, doctors, tax officers, and council administrators for construction of permits or local market stall.

The project was initiated because local residents do not have access to information regarding spending by their local governments and are not empowered to demand accountability from their local government administrations.

The project therefore is designed to help motivate and encourage local residents to use existing anti-corruption laws, standards and institutions.

Since inception, the project has targeted local residents and stakeholders in local government areas of Lagos State. The project would be extended to more local government areas across the country in the future.

### **Thank you**

We are extremely grateful for the generosity of our many supporters and partners whose interest and assistance over the past 7 years has helped to realise our organization's mission of promoting transparency and accountability in government and legal recognition and enjoyment of economic and social rights in Nigeria.

In particular, we would like to acknowledge and thank the following for their support: Royal Netherlands Embassy, Abuja, Nigeria; Macarthur Foundation, USA; National Endowment for Democracy (NED), USA; Kenya Section of the International Commission of Jurists (ICJ Kenya); Open Society Initiative for West Africa (OSIWA); The U.N Global Compact, Amnesty International Netherlands; Amnesty International, International Secretariat, London; Save Darfur Coalition, USA; Darfur Consortium, USA; West African Bar Association (WABA); Independent Corrupt Practices and Other Related Offences Commission, (ICPC); Global Fund for Women, and [HYPERLINK](http://www.cseaafrica.org/index.php?option=com_content&view=article&id=259:facility-for-oil-sector-transparency-in-nigeria&Itemid=370)

"[http://www.cseaafrica.org/index.php?option=com\\_content&view=article&id=259:facility-for-oil-sector-transparency-in-nigeria&Itemid=370](http://www.cseaafrica.org/index.php?option=com_content&view=article&id=259:facility-for-oil-sector-transparency-in-nigeria&Itemid=370)" Facility for Oil Sector Transparency in Nigeria (FOSTER), a major change programme funded by the UK Government's Department for

International Development (DFID) to strengthen transparency and accountability in the oil and gas sector of Nigeria.

Without the support and encouragement of our donors we would not be able to recount the many successes listed on these pages. We would like to place on record our sincere thanks to those individuals, organisations and governments who have made contributions to our work. We would also like to show our enormous appreciation for our partners whether they be local or international NGOs or governmental institutions or volunteers

As we seek to address new challenges and opportunities in the anti-corruption and economic and social rights field, we look forward to deepening our relationships with our supporters and partners and working together to promote our vision of a corruption-free Nigeria in which citizens can effectively enjoy their economic and social rights without any discrimination whatsoever.

### **SERAP today**

In the past years, SERAP has developed into a serious public interest organization in the areas of anti-corruption and economic and social rights. Our greatest strength is the use of Nigeria's international human rights and anti-corruption obligations and commitments to interpret national laws, and to hold the government account.

SERAP has experienced and committed team, and an ever increasing pool of volunteers and partners, experienced board, and distinguished national and international advisory boards. The expertise and experience available to the organization has made us well placed to advance our mission and contribute meaningfully to the efforts to address transparency and accountability and socio-economic challenges confronting Nigeria today.

Since 2004 we have developed our internal governance and working methods and programmes to address new opportunities and challenges.

The governance and socio-economic challenges that informed the establishment of SERAP have remained and as such the organization's founding vision is as valid today as then. High level official corruption remains pervasive while the number of Nigerians living in poverty and without access to basic necessities of life continues to increase.

While some legislation exist on economic and social rights issues, the constitution still does not contain legally enforceable economic and social rights. While there are interesting and progressive pronouncements on economic and social rights from the ECOWAS Court of Justice, Nigerian courts continue to refuse to uphold economic and social rights as legally enforceable human rights. Impunity for violations of these human rights has remained for many years.

In the course of our work, SERAP continues to establish new collaborations and networks while building on and strengthening existing ones. The impact of our work is greatly enhanced by close working relations with the media, and other partners with complementary expertise.

SERAP also has observer status with the African Commission on Human and Peoples' Rights in Banjul, The Gambia. SERAP is a member of the UN Global Compact, and works closely with the Global Compact office in New York to contribute to the Global Compact 10th Principle requiring businesses to work against corruption, in all its forms, including extortion and bribery, and works closely with the Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC).