

**Experience sharing on strategic litigation on the SALI project before the ECOWAS Court of Justice in Nigeria: Being a presentation made by Angela Uwandu (Avocats Sans Frontières France Head of Office in Nigeria) and Kolawole Ogunbiyi (SALI Senior Lawyer/Legal Manager) at the Saving Lives final conference in Paris, France.**

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During this presentation, the team will share its experience in strategic human rights litigation on 2 death penalty cases before a regional court: the ECOWAS Community Court of Justice: The cases of Thankgod Ebhos and Maimuna Abdulmumini. This intervention was carried out on the platform of the legal aid activity of the Saving Lives project of Avocats Sans Frontières France (ASF France) implemented in Nigeria since 2011.

However, it is important to state that ASF France has also secured several favourable judgments at the national courts in Nigeria and favourable consideration of prerogative of mercy applications sent to various state governments between 2011 and 2014 on the cases of persons facing the death penalty in Nigeria. ASF France intervention in the cases of Maimuna Abdulmumini and Thankgod Ebhos, saw to the establishment of precedents in the enforcement of the rights of detainees on death row in the ECOWAS region.

#### THANKGOD EBHOS'S CASE:

Mr. Thankgod Ebhos narrowly escaped being executed alongside four other inmates on June 24<sup>th</sup> 2013. The four other inmates were executed on that day while Thankgod was returned to his cell after he had already been led to the gallows.

Upon this development, ASF France immediately initiated an action at the ECOWAS Community Court of Justice in Abuja where it sought and obtained an order on interim measures for stay of execution of Thankgod pending the determination of the case by the ECOWAS Court. The ECOWAS Court also directed the Federal Government of Nigeria to strike the name of Thankgod off the death row list.

To ASF France legal team, this was a remarkable achievement. Thankgod Ebhos at the time he committed the crime in 1988, under the military administration had no right of appeal for a sentence of a military tribunal. This was part of argument canvassed by the federal government in this application while ASF France maintained that appeal is a fundamental right which must not be denied anyone at anytime particularly when death sentence is handed down on him. It was particularly worrisome when the tribunal/panel comprised of military personnel with little or no legal background.

The ECOWAS Court affirmed this position when the court delivered her judgment on the 10<sup>th</sup> June 2014 and clearly stated that appeal is a fundamental right which should not be denied

anyone charged with a capital offence. The court awarded compensation for the violation of his right to fair trial.

#### MAIMUNA ABDULMUMINI'S CASE

When Avocats Sans Frontières France identified the case of Maimuna Abdulmumini in January 2013, one thing was paramount for us: obtaining justice for this young woman whose rights have been grossly violated.

Maimuna Abdulmumini was a child bride who was alleged to have killed her husband at the age of 13. She was arrested, tried and sentenced to death for an offence she was alleged to have committed when she was just 13 years old.

She was initially arrested by the police on March 28, 2006, and was remanded in Remand Home mainly for juvenile offenders. She was released 6 months after but was rearrested when she was over 18 years, tried and sentenced to death by a state high court in Katsina state on December 6, 2012 for an offence she committed as a minor.

By sentencing her to death irrespective of her age at the time of commission of the offence, the Katsina state high court and indeed the Federal Government of Nigeria exhibited flagrant disregard for established human rights laws and principles at national, regional and international levels.

It is important to note that Maimuna after she was released from Remand Home re-married and had a baby before she was sentenced to death. At the time ASF France identified her case, Maimuna was on death row with her infant baby. Her baby had not attained the statutory age of 18 months before she could be separated from her mother hence, she was detained with her mother. ASF France made a request in the application filed at the ECOWAS Court for adequate provisions for the child in prison. The baby was only released to Maimuna's mother in October 2013 after ASF France published an article decrying the imprisonment of baby with mother in poor and unhygienic conditions. No special provisions are made in prisons for the welfare of pregnant women and nursing mothers with babies in prison.

ASF France took her case to ECOWAS Court alleging an infringement on the rights of Maimuna. Under International human rights law, the death penalty should not be applied to minors. ASF France also canvassed that the sentencing of Maimuna to death was in breach of Articles 4, 5, 7 and 16 of the African charter on human and people's rights.

Considering the fact that 4 inmates on death row in Nigeria were executed on June 24, 2014, ASF France first filed an application for interim measures requesting that the government be barred from executing Maimuna. The Court on February 14, 2014 granted the application by

issuing an injunction restraining the Federal government of Nigeria from executing Maimuna. This was the first victory in the case.

The ECOWAS community Court of Justice delivered its final judgement on Maimuna's case on June 10, 2014 where it awarded damages to Maimuna for the violation of her rights as contained in regional and international legal laws to the tune of N5million naira. The court also awarded N500,000 for the cost of litigation.

### **Challenges experienced during the strategic litigation process:**

It is important to mention some of the challenges experienced by the legal team in the course of pursuing these cases.

The prisons in Benin, Edo State where Thankgod was detained became hostile to the team and wouldn't allow the lawyers visit Thankgod or get any information from him. This was a very big challenge because his statement was very necessary to prepare court processes.

When his matter was eventually filed at the regional court, the application suffered few adjournments before the application was heard at all. The defence counsel from the ministry of justice was very hostile and launched a verbal attack on the team and the human rights community in the open court room.

The 2<sup>nd</sup> respondent, Edo State government almost took the process aback when it filed an application after the ruling on interim measures was served on the government. This was also followed with several adjournments before the final judgement was delivered on the June 10, 2014.

On Maimuna's case, the controversy on her age could only be resolved by a deposed affidavit by her mother who lives in the rural community. First it was difficult to locate her and secondly, as a rural woman, she did not understand court processes and procedures. The efforts of the team only yielded result after much persuasion and assurance before the mother eventually deposed to an affidavit declaring the age of her daughter, Maimuna.

Unlike Thankgod's application where only Federal government filed a 3 page reply, the Katsina State government filed several applications and replies to ASF France's application. The ministry of justice and the Nigerian prisons service also filed replies. The application suffered 5 adjournments before it was heard for the first time and in Lome, Togo Republic. The adjournment of the case to a new location, Togo at very short notice posed logistics challenges for the team to organize an international mission at such short notice. As a result of the several adjournments at short notice, the French Lawyers working on the case in Paris: Jean Sebastien Mariez and Cecile Ostier could not join the local team for the court appearance although they had worked on the Court processes.



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It is very important to know that Maimuna's baby who had been in prisons was quickly removed from her and was taken to her mother in the village as a result of this legal action. As a result of our intervention in these cases, adherence to due process in the prosecution of death penalty related cases is expected to be sacrosanct.

### **Success story**

While we are still expecting the full implementation of judgment in Maimuna's case by the concerned authorities, Thankgod Ebhos was released on the October 24, 2014. His order of released was granted on the 2<sup>nd</sup> of October 2014 by the governor of Kaduna State following a prerogative of mercy application sent him by Avocats Sans Frontières.

The judgement of the ECOWAS Court in Maimuna's case has set a precedent in the ECOWAS region in establishing the protection of the law for minors against the death penalty.

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