

004/12 Emmanuel Joseph Uko and Others v. The Republic of South Africa

IN THE MATTER OF
EMMANUEL JOSEPH UKO AND OTHERS
V.
THE REPUBLIC OF SOUTH AFRICA

APPLICATION 004/2012

DECISION

The Court composed of: Gérard NIYUNGEKO, President; Sophia A.B. AKUFFO, Vice-President; Modibo T. GUINDO, Fatsah OUGUERGOUZ, Augustine S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON and Sylvain ORE- Judges; and Robert ENO - Registrar,

In the matter of:
EMMANUEL JOSEPH UKO AND OTHERS
V.
THE REPUBLIC OF SOUTH AFRICA.

After deliberations,
makes the following decision :

1. By Application dated 20 February 2012, Mr. Emmanuel Joseph Uko, a national of the Federal Republic of Nigeria, seized the Court, on his behalf and on behalf of his family members resident in South Africa, with a petition against the Republic of South Africa, for violations of articles 2, 3, 4, 5, 6, 7, 10, 11, 18 and 19 of the African Charter on Human and Peoples' Rights, as well as the provisions of the African Charter on the Rights and Welfare of the Child , and Articles 7

× No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation ,10

× **Article 10:(1)**All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. **(2)(a)**Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; **(2)(b)**Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.**(3)**The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. ,12

× **Article 12:(1)**Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. **(2)**Everyone shall be free to leave any country, including his own.**(3)**The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. **(4)**No one shall be arbitrarily deprived of the right to enter his own country. , 13

× An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his

case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

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× **Article 14:** (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (3)(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (3)(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (3)(c) To be tried without undue delay; (3)(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (3)(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (3)(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (3)(g) Not to be compelled to testify against himself or to confess guilt. (4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. (5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. (6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. (7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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× **Article 17:** (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

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× **Article 19:** (1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

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× **Article 23:** (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (2) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3) No marriage shall be entered into without the free and full consent of the intending spouses. (4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

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× **Article 24: (1)** Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. **(2)** Every child shall be registered immediately after birth and shall have a name. **(3)** Every child has the right to acquire a nationality.
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× All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
of the International Covenant on Civil and Political Rights .

2. In accordance with the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (hereafter referred to as the Protocol) and Rule 8(2) of the Rules of Court (hereafter referred to as the Rules), Judge Bernard M. Ngoepe, member of the Court, of South Africa nationality, recused himself.

3. Pursuant to the provisions of Rule 34 (1) of the Rules of Court, the Registrar, by letter dated 28 February 2012, acknowledged receipt of the application.

4. In the same letter, the Registrar further sought clarification from the Applicant on the status of his communication lodged before the African Commission on Human and Peoples' Rights (the Commission), since Rule 29 (6) of the Rules of Court provides that: For the purpose of examining an application brought before it, relating to issues in a communication before the Commission, the Court shall ascertain that the said communication has been formally withdrawn .

5. By letter dated 8 March, 2012, the Registrar informed the Applicant that pending clarification from him on the status of his communication before the Commission, the Registry has proceeded to register his application.

6. As at the time of this decision, the Applicant had not responded to the Registrar's letter of 28 February, 2012.

7. Be that as it may, the Court first observes that in terms of Article 5(3) of the Protocol, it may entitle relevant Non-Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

8. The Court further notes that Article 34(6) of the Protocol provides that At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.

9. By letter dated 30 March 2012, the Registrar inquired from the Legal Counsel of the African Union Commission if the Republic of South Africa has made the Declaration required under Article 34 (6) of the Protocol establishing the Court.

10. By email dated 12 April, 2012, the Legal Counsel of the African Union Commission informed the Registrar that the Republic of South Africa has not made the declaration.

11. The Court observes that the Republic of South Africa has not made the Declaration under Article 34 (6) of the Protocol.

12. In view of Articles 5 (3) and 34 (6) of the Protocol, it is evident that the Court manifestly lacks jurisdiction to receive the Application submitted by Emmanuel Joseph Uko and Others, against the Republic of South Africa.

13. For these reasons,

THE COURT,

Unanimously:

Decides that pursuant to Articles 5 (3) and 34 (6) of the Protocol, it manifestly lacks jurisdiction to receive the Application submitted by Emmanuel Joseph Uko and Others, against the Republic of South Africa, and the Application is accordingly struck out from the general list of the Court.

Done at Arusha, the thirtieth day of March, Two Thousand and Twelve, in English and French, the English text being authoritative.