



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

In the Matter of

**THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS
AND ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC
OF NIGERIA**

Application No: ECW/CCJ/APP/23/21 Ruling No. ECW/CCJ/RUL/03/21

RULING

ABUJA

22 June 2021

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**THE REGISTERED TRUSTEES OF
THE SOCIO-ECONOMIC RIGHTS
AND ACCOUNTABILITY
PROJECT (SERAP)**

...

APPLICANT

v.

FEDERAL REPUBLIC OF NIGERIA

...

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Keikura BANGURA

- Member/Rapporteur

Hon. Justice Januaria T. Silva Moreira COSTA

- Member

ASSISTED BY:

Mr. Athanase ATANNON

- Deputy Chief Registrar

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REPRESENTATION OF PARTIES:

Femi FALANA, SAN

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Enock SIMON

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Counsel for the RESPONDENT



I. RULING:

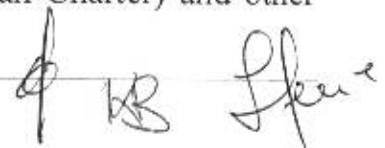
1. This is the ruling of the Court delivered virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant is the Socio-Economic Rights and Accountability Project (SERAP) a Non-Governmental Organization registered and situated in the Federal Republic of Nigeria (hereinafter referred to as the "Applicant").
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS and State Party to the African Charter on Human and Peoples' Rights and other international human rights instruments (hereinafter referred to as the "Respondent").

III. INTRODUCTION

4. The subject-matter of the case is the legality of the ban/suspension of the microblogging service, Twitter, by the Respondent and its agents on the 4th June, 2021, which has resulted in the violation of the right to freedom of expression, access to information and media freedom guaranteed by the African Charter on Human and Peoples' Rights (African Charter) and other

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international human rights treaties and conventions that the Respondent is party to.

IV. PROCEDURE BEFORE THE COURT

5. An application initiating a claim for the violation of human rights was filed by the Applicant in the Registry of the Court on the 8th June, 2021 together with an application for Provisional Measures and Instructions.
6. A Motion on Notice to bring additional documents was filed by the Applicant on the 21st June, 2021 together with an Affidavit in Support of the Motion and Written Address in Support of the Motion on Notice to bring additional documents before the Court.
7. The Respondent filed a Notice of Preliminary Objection on the 21st June 2021 together with its Written Address in Support of the Preliminary Objection. The Affidavit in Opposition to the Provisional Measures filed by the Applicant was also filed together with the pleas of fact and law on the 21st June 2021 by the Respondent. Further, the Statement of Defense and the pleas of law and fact were filed by the Respondent on the 21st June 2021.
8. The Applicant's Reply to the Respondent's Notice of Preliminary Objection was filed on the 22nd June 2021 together with the Affidavit in Support therein.

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V. APPLICANT'S CASE

a) Summary of facts

9. It is the case of the Applicant that the Respondent on the 4th of June 2021 announced the indefinite suspension of Twitter in Nigeria whereupon it lodged an Application at the Court challenging the said suspension. By a separate document, the Applicant filed the instant application for provisional measures and instructions seeking the reliefs listed in paragraph 10 herein.

a) Pleas in law

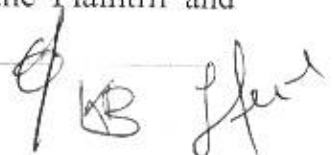
10. The Applicant relied on the following laws:

- i. Article 20 of Protocol A/P/1/7/91 of the Court; and
- ii. Articles 79 (1) & (2) and 81 (1) & (2) of the Rules of the Court.

b) Reliefs Sought

11. The reliefs sought by the Applicant are as follows:

- i. *AN INTERIM ORDER* of this Honorable Court restraining the Respondent and its agents from unlawfully imposing sanctions or doing anything whatsoever to harass, intimidate, arrest or prosecute Twitter and/or any other social media service provider(s), media houses, radio and television broadcast stations, the Plaintiff and



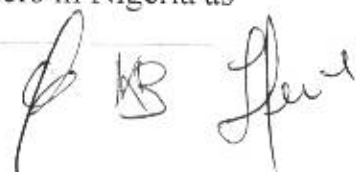
other Nigerians who are Twitter users, in violation of the African Charter of the on Human and Peoples' Rights and International Covenant on Civil and Political Rights, pending the hearing and determination of this suit.

- ii. AN INTERIM ORDER of this court restraining the Respondent and its agents from unlawfully regulating, censoring, imposing ban, shutting down, licensing or restricting the access of the Applicant, together with those of other concerned Nigerians to the social media and the internet and every other medium of expression or anything whatsoever pending the hearing and determination of this suit.
- iii. AN INTERIM ORDER of this court restraining the Respondent and its agents from harassing, intimidating, arresting and prosecuting the Applicant, concerned Nigerians and other people simply for peacefully exercising their human rights through Twitter and other social media platforms, pending the hearing and determination of this suit.

VI. RESPONDENT'S CASE

a) Summary of facts

12. The Respondent presented facts supporting its ban on the microblogging service, Twitter, claiming that the ban had been done pursuant to extant laws and in the interest of national security. It is the Respondent's submission that the suspension has in no way aggrieved individual Twitter users in Nigeria as



they are accessing their accounts vide Virtual Private Networks (VPN) in Nigeria.

b) Pleas in law

13. The Respondent relied on the following laws:

- i. Section 420, 419 of the Penal Code (Northern States) Federal Provisions Act; and
- ii. Section 58 of the Criminal Code Act.

c) Reliefs Sought

14. The relief sought by the Respondent is as follows:

- i. An order of this Honorable Court striking out and /or dismissing this notice of registration of application for want of jurisdiction.

VII. PROCEEDINGS BEFORE THE COURT
PRELIMINARY OBJECTION

15. The Respondent in its submission objected to the application for interim measures relying on two grounds therein to wit:

- a. That the subject matter of the suit is not for the enforcement of any human right recognized by this Court.

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- b. That this Honorable Court lacks the jurisdiction to determine the criminalization of an act under Nigerian domestic laws.

Ground one

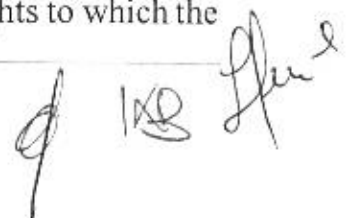
The Respondent's case

16. The Respondent states that for the Court to assume jurisdiction it must have been conferred on it by statute or other instruments establishing the Court. That the suspension of Twitter in Nigeria is not in any way connected to any individual in Nigeria or to the Applicants. That the action of the Respondent relates to the operation of Twitter in Nigeria and not to a ban on individual users Twitter accounts. That the suspension of Twitter in Nigeria does not fall under the provisions of the African Charter or other international human rights treaties.

17. In addition, Twitter as an entity is not an organization of a Member State but an American microblogging and social media networking service on which users post and interact with messages. The violation of Nigerian domestic legislation and consequent compulsory shutdown of an entity cannot be termed as the breach of any fundamental rights recognized and enforceable by this Court.

The Applicant's Case

18. The Applicant contends that ground one and the argument in support of same cannot stand as the subject-matter borders on freedom of expression which is recognized by the African Charter on Human and People's Rights to which the



Respondent/Applicant is a party. Relying on the Court's decision in the case of AMNESTY INTERNATIONAL V REPUBLIC OF TOGO JUDGMENT NO. ECW/CCJ/JUD/09/20 at page 11, the Applicant contends that the right to freedom of expression, access to information and media freedom, which are the violations in the present suit, are directly enforceable by the Court.

19. The Applicant submitted that a legal order was created with the establishment of the ECOWAS Revised Treaty and protocols and other related commitments by State Parties as they undertook to address any violation of human rights. Therefore, the act of the Respondent which is a violation on the rights to freedom of expression, access to information and media freedom impinges on the fulfillment of the obligation of the Respondent.

20. It was also contended by the Applicant that the provisions of extant laws cannot be used to bar the jurisdiction of this Court and in the instance where there is a conflict between a State's international obligations under human rights and domestic legislation, the former prevails.

Analysis of the Court

21. The crux of the Preliminary Objection of the Respondent in ground one is that the subject matter of the suit which relates to the indefinite suspension of the Twitter is not in any way connected to any individual Nigerian or the Applicant in the suit. That the right to freedom of expression is different from freedom of reach as twitter in Nigeria is not a right recognized under any treaty enforceable by this Court.



22. The Court recalls its decision in which it made a pronouncement that access to the internet though not a right, in the strict sense, serves as a platform in which the rights to freedom of expression and freedom to receive information can be exercised. Therefore a denial of access to the internet or to services provided via the internet, as a derivative right, operates as denial of the right to freedom of expression and to receive information. This was adequately captured by the Court as follows,

“Access to internet is not stricto sensu a fundamental human right but since internet service provides a platform to enhance the exercise of freedom of expression, it then becomes a derivative right that is a component to the exercise of the right to freedom of expression. It is a vehicle that provides a platform that will enhance the enjoyment of the right to freedom of expression. Right to internet access is closely linked to the right of freedom of speech which can be seen to encompass freedom of expression as well. Since access to internet is complementary to the enjoyment of the right to freedom of expression, it is necessary that access to internet and the right to freedom of expression be deemed to be an integral part of human right that requires protection by law and makes its violation actionable. In this regards, access to internet being a derivative right and at the same time component parts of each other, should be jointly treated as an element of human right to which states are under obligation to provide protection for in accordance with the law just in the same way as the right to freedom of expression is protected. Against this background, access to the internet should be seen as a right that requires protection

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of the law and any interference with it has to be provided for by the law specifying the grounds for such interference.”

23. The above cited decision is on all fours with the instant case. The Court recognizes that access to Twitter provides a platform for the exercise of the right to freedom of expression and freedom to receive information, which are fundamental human rights and any interference with the access will be viewed as an interference with the right to freedom of expression and information. By extension such interference will amount to a violation of a fundamental human right which falls within the competence of this Court pursuant to Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05) Amending the Protocol (A/P1/7/91) relating to the Community Court of Justice. Evidently, this situates the claim before the Court as one bordering on the violation of human rights which has occurred in a Member State.

24. Noting that the Respondent has also argued that its action is against a particular entity, Twitter and not the Applicant, and that the subject matter of the suit is therefore not for the enforcement of human rights, the Court is inclined to reiterate its competence. Article 9(4) of the Supplementary Protocol (A/SP.1/01/05) Amending the Protocol (A/P1/7/91) relating to the Community Court of Justice provides “*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*” It is trite that a mere allegation of a violation of human rights in the territory of a Member State is sufficient, *prima facie*, to justify the Court’s jurisdiction.



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25. Consequently, the Court holds that it has jurisdiction to hear the application and dismisses ground one same being premised on the violation of human rights.

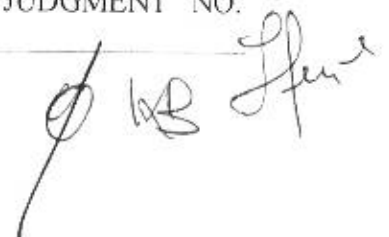
On ground two

Respondent's case

26. The Respondent contends that the "...*Court lacks the jurisdiction to determine the criminalization of an act under Nigerian laws.*" The argument in support of this ground is that the suspension vests directly on Twitter and not on the Applicant as neither the rights of the Applicant nor other Twitter users in Nigeria have been tampered with by the Respondent. Furthermore, that the use or operation of Twitter constitutes the offences of Importation of Prohibited Publication under Sections 420 and 421 or the offence of possession of seditious articles under Section 419 of the Penal Code (Northern States) Federal Provisions Act. In conclusion, the Respondent is within its right to prosecute in accordance with its criminal laws.

Applicant's case

27. The Applicant argues that the objection in ground two is flawed as the nature of the suit has been misunderstood by the Respondent. That the present suit is based solely on the violations of the rights to freedom of expression, access to information and media freedom which are directly enforceable before this Court pursuant to Article 9 (4) of the Supplementary Protocol of the Court. Relying on MANNEH V REPUBLIC OF THE GAMBIA JUDGMENT NO.

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ECW/CCJ/JUD/03/08 and ALHAJI HAMMANI TIDJANI V FEDERAL REPUBLIC OF NIGERIA AND 4 ORS. JUDGMENT NO. ECW/CCJ/JUD/01/06 the Applicant put forward the combined effect of Article 9 (4) and Article 10 (d) of the Supplementary Protocol. That where a right recognized by the African Charter has been violated by the Respondent and there is no action pending before any other International Court with respect to the same, neither is there a laid down law that led to the alleged breach, the Court has competence to hear the such a claim.

28. Furthermore, the Applicant contends that ground two cannot succeed as the Court has ruled previously in AMNESTY INTERNATIONAL V REPUBLIC OF TOGO (supra) that “...*failure of the Respondent to provide the said law is evidence that their action was not done in accordance with the law...*” the Applicant contends that it is unfortunate that the Respondent has cited provisions of the Penal Code as basis for the ban on Twitter as same were declared illegal and unconstitutional in Nigeria by the Court of Appeal in ARTHUR NWANKWO V THE STATE (1985) 6 NCLR 228.

29. It is submitted by the Applicant that the Attorney-General of the Respondent denied the threats to prosecute and arrest violators of the ban on Twitter after he was exposed for defying the said ban. The Applicant therefore urged the Court to declare its jurisdiction to hear the application, dismiss the Preliminary Objection of the Respondent and determine the suit in favor of the Applicant.

Analysis of the Court



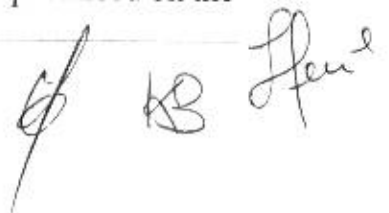
30. The Court notes that the Applicant considers this ground and the accompanying argument as unfortunate as it is evident that the Respondent has misunderstood the subject matter of the application. The Applicant however, submits that the suit is premised on violations of human rights and that the said law used in support of the ground has been declared illegal.
31. What is before the Court is an application for the violation of human rights committed with the territory of a Member State and not the determination of the criminalization of an act under Nigerian laws. This Court is guided by its competence pursuant to Article 9 (4) supra and its jurisprudence that has continued to elaborate on when the Court assumes jurisdiction.
32. The construct of the ground itself by the Respondent makes apparent to the Court that the subject matter of the Application has not been understood by the Respondent. The Court is not urged to make a pronouncement on the right of the Respondent to prosecute a crime within its domestic laws but on the right to deny the enjoyment of a right through prosecution.
33. The Court finds the objection in ground two untenable and dismisses it accordingly.

VIII. APPLICANT'S APPLICATION FOR PROVISIONAL MEASURES

Analysis of the Court

On expedited procedure

34. The Applicant prayed that in view of the urgency of the matter, the Application be heard expeditiously. The request for expedited procedure is premised on the

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fact that twitter is a widely used platform for receipt and dissemination of information and the ban has implications on all users including the Applicant, entrepreneurs and other private individuals. It is therefore the contention of the Applicant that issues raised demand an urgent deliberation to forestall irrecoverable economic loss and deprivation of access to information with its attendant consequences on the Applicant and millions of other Nigerian users.

35. *"A request for expedited procedure is granted when the particular urgency of a case requires that the Court adjudicates within the shortest possible time".* (See: SOW BERTIN AGBA V REPUBLIC OF TOGO JUDGMENT NO. ECWCCJ/JUD/05/13.) The Court has cautiously considered inter alia the facts pleaded in the Application and the oral submissions by both parties, particularly the Applicant's submission which drove home the need for this Application to be heard and for the issues to be determined expeditiously. The Court having also carefully given due consideration to the nature of the case, its alleged potential global implication on users both in and out of the territory of the Respondent including the Applicant, the alleged potential financial implication on the users, is convinced that the Application ought to be determined expeditiously.

36. Consequently, the Court being persuaded by the urgency pleaded, grants the Applicant's prayer in that wise and in accordance with Rule 79 of the Rules of the Court, all timelines will be abridged as the Court deems fit.

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On other provisional measures

37. The Applicant sought the order of Court to grant Provisional Measures as enumerated in paragraph 7 supra. The Court notes that reliefs 1 & 2 speak to the same issue that is; the alleged intimidation, threat to arrest and prosecute users of twitter in Nigeria. The Court will therefore address the two reliefs collectively.

On order to restrain the arrest or prosecution of users of twitter in Nigeria.

The Applicant's case

38. The claim of the Applicant is that following the suspension of Twitter by the Respondent, the Attorney- General and Minister of Justice acting on its behalf directed the Director of Public Prosecution and other agents of the Respondent to arrest and prosecute anyone using Twitter in Nigeria.

39. In response to above directive, the Respondent through the National Broadcasting Commission, directed media houses to deactivate their Twitter accounts and discontinue its use. These actions according to the Applicant has put millions of Nigerians and the Applicant under perplexing fear and premonition of possible suspension of other means of freedom of expression such as Facebook, Instagram and WhatsApp, which has the potential of fully shutting down all social media channels, and restraining freedom of expression, access to information and media freedom in Nigeria.

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40. The Applicant therefore argued that except an interim order is entered restraining the Respondent and its agents from carrying out their threat, the Respondent will breach and continuously breach the rights of the Applicant, together with those of other concerned Nigerians and any subsequent order of the Court in favor of the Applicant will be rendered nugatory. They therefore prayed that this provisional measure be granted pending the determination of the substantive application.

The Respondent's case

41. The Respondent contends that for a Court to grant an interim order, there must be evidence of a potential harm before it and that in the instant case the Applicant is not affected or harmed by the suspension of Twitter. Further, the Respondent relied on the decision of the Supreme Court of the Federal Republic of Nigeria in ADELEKE V LAWAL (2014) 3 NWLR (Pt1393) at page 5 where it stated that in the grant of an interlocutory injunction the following conditions must be apparent:

- a. *An existence of a legal right;*
- b. *A substantial issue to be tried;*
- c. *That the balance of convenience is in favor of the party seeking the relief;*
- d. *Failure to grant the injunction would cause irreparable damage or injury to one of the parties.*

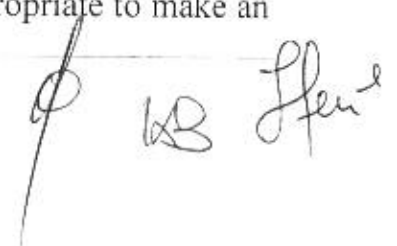
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42. Hinging its argument on the conditions aforementioned, the Respondent submits that the Applicant has failed to meet these conditions to warrant the grant of the interim measures prayed for in this Application and urges the Court to refuse the Application on this basis.

Analysis of the Court

43. The Court considers that interim measures are urgent measures which, in accordance with the established practice of the Court, apply only where there is an imminent risk of irreparable damage. (See: MAMATKULOV AND ASKAROV V TURKEY [GC], nos. 46827/99 and 46951/99, &104, 4th February 2005). The import of an application for an order for interim measures is to preserve the '*res*' of the subject-matter and to forestall or prevent a harm or damage which is futuristic albeit plausible.

44. In the instant case, though the threat of prosecution has not been established to have been activated, the fear of its prospect is nevertheless real. The Court is therefore convinced that its possibility ought to be suspended pending the determination of the substantive application. The damage that may potentially arise from the prosecution and sanction for a crime, the legitimacy of which is yet to be determined by the Court is obviously irredeemable/irreparable in the event that the prosecution is declared to be unlawful. In that wise the Court ought to order that the Respondent to take certain measures provisionally while it continues its examination of the case. It is therefore appropriate to make an

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order to ensure the final decision on the substantive matter or the Res is preserved to the end of the trial.

45. Consequently, the prayer of the Applicant in this wise is granted and the Respondent and its agents are hereby restrained from sanctioning any media house or harassing, intimidating, arresting and prosecuting the Applicant and concerned Nigerians for the use of twitter and other social media platforms, pending the hearing and determination of the substantive suit.

On order to lift the suspension on twitter

The Applicant's case

46. The Applicant avers that given that an Application has been lodged before the Court challenging the powers of the Respondent to suspend twitter, the instant Application seeks an interim order of the Court to lift the suspension pending the determination of the substantive application. This is premised on the fact that the Applicant who greatly relies on Twitter in the conduct of its work and millions of youth who are dependent on the use of Twitter as a sole source of income are currently negatively impacted and will continue to if the suspension is not lifted.

The Respondent's case

47. The Respondent contends that granting the application at this stage without the Applicant showing any urgency will amount to disposal of the substantive suit

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which would be prejudicial to the fair trial of the substantive matter and lead the Court to delivering two judgments in one.

Analysis of the Court

48. The Court reiterates the significance of provisional measures and reaffirms that it is a temporary stop gap to prevent the occurrence of a potential harm, injury or damage that may arise from an alleged violation of human rights. The measure is largely preventive in nature and where the perceived or anticipated damage has already occurred with the infliction of the attendant suffering, its order becomes devoid of purpose.

49. In the instant case, the suspension of Twitter allegedly took immediate effect on the day it was published that is the 4th of June 2021. The instant Application was filed on the 8th of June 2021. The alleged loss of livelihood amongst other consequential adverse effects of the suspension would already been activated and biting so to say before this Application was filed.

50. The Court having considered all the submissions made by the parties herein, is convinced that granting the Applicant's prayer to lift the suspension under the conditions stated above will amount to chasing the wind. The appropriate decision will be made upon the determination of the substantive application. The Court therefore declines to order the Respondent and his agents to lift the suspension on twitter.

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IX. OPERATIVE CLAUSE.

For the reasons stated above, the Court sitting in public after hearing both parties:

- i. **Declares** that it has jurisdiction to hear and determine the Application.
- ii. **Dismisses** the Preliminary Objection of the Respondent on both grounds.
- iii. **Orders** that the Application be heard expeditiously.
- iv. **Orders** the Respondent and its agents to refrain from imposing sanctions on any media house or harassing, intimidating, arresting or prosecuting the Applicant or concerned Nigerians for the use of Twitter and other social media platforms, pending the hearing and determination of the substantive suit.
- v. **Declines** to order the Respondent and its agents to lift the suspension on the use of Twitter pending the determination of the substantive suit.
- vi. **Orders** the Respondent to take steps to immediately implement the orders set above herein.

Hon. Justice Gberi-Be OUATTARA -Presiding



Hon. Justice Keikura BANGURA - Judge Rapporteur

Bangura

Hon. Justice Januaria T. Silva Moreira COSTA- Member

Costa

Mr. Athanase ATANNON - Deputy Chief Registrar

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Done in Abuja, this 22nd Day of June 2021 in English and translated into French and Portuguese.

