IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY

OF THE WEST AFRICAN STATES (ECOWAS)

In the Matter of

GBELA GUELALO AND 3 OTHERS

V.

REUBPLIC OF CÔTE D'IVOIRE

Application No. ECW/CCJ/APP/51/22 - Judgment No. ECW/CCJ/JUD/18/25

JUDGMENT

ABUJA

On 08th April 2025

APPLICATION No. ECW/CCJ/APP/51/22

JUDGMENT No. ECW/CCJ/JUD/18/25

BETWEEN

GBELA GUELALO CHRISTINE

KAOUME TEA YVONNE

ANICETE GBATO ELDVIGE ÉPOUSE (MAIDEN NAME) GOMPOU

NOUHOUAN KOUAN MARIE **APPLICANTS**

AND

REPUBLIC OF CÔTE D'IVOIRE **DEFENDANT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES - Presiding/Judge Rapporteur

Hon. Justice Sengu Mohamed KOROMA - Member

Hon. Justice Edward Amoako ASANTE - Member

ASSISTED BY

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF THE PARTIES

Me Simone Assa Akoh et Institute for Human Rights and Development in Africa
- Counsel to the Applicants

Le Ministre de l'Economie pris en la personne de l'Agent judiciaire du trésor et de la comptabilité publique- Counsel to the Defendant

I. JUDGMENT

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

II. IDENTIFICATION OF PARTIES

2. The first Applicant is Mrs. Kaoume Tea Yvonne, of no profession, aged 59, residing in Danané. She filed the application on behalf of herself and as the beneficiary of her daughter Goman Dieumon Syprienne, who died on February 2, 2011, following the shock caused by her mother's rape in her presence.

3. The second Applicant is Mrs. Nouhouan Kouan Marie, a 49-year-old domestic worker. She filed the application on behalf of herself and as the beneficiary of her daughter Messan Kantodeugo Béatrice, who died on March 2, 2011, three days after the rape and as a result of the rape.

4. The third Applicant is Mrs. Anicette Gbato Eldvige Épouse Gompou, a 47-year-old domestic worker living in Danané.

5. The fourth Applicant is Mrs. Gbela Guelalo Christine, a trader, aged 59, residing in Niambly, in the sub-prefecture of Duékoué. Gbela Guélalo Christine filed the application on her own behalf and in her capacity as beneficiary of her daughter Glomaho Juliana, who died at the age of 20 as a result of the injuries and rape she suffered.

6. The Defendant is the Republic of Côte d'Ivoire, a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights, hereinafter referred to as the African Charter.

III. INTRODUCTION

7. In the instant case, the Applicants came to claim a violation of their human rights, since tensions during the 2010 presidential elections in the Defendant State escalated into armed conflict and it was in this context that the Applicants were all victims of sexual violence between December 2010 and December 2011; they allege that they filed complaints with the Public Prosecutor's Office and the Court of First Instance of Abidjan on 7 December 2012; they conclude by claiming that, due to Amnesty Decree No. 2018-669 of 6 August 2018, they were deprived of compensation for the damage caused to them.

IV. PROCEEDINGS BEFORE THE COURT

8. The originating application (doc.1), accompanied by ten (10) annexures, was registered at the Registry of this Court on October 26, 2022.

9. The Defendant State, the Republic of Côte d'Ivoire, which was duly served on October 31, 2022, presented its defense (doc. 2) on February 16, 2023, which was served on the Applicants on February 17, 2023.

10. On March 15, 2023, the Applicants filed their reply (doc. 3), which was served on the Defendant State on the same date.

11. On March 31, 2023, the Defendant State presented its rejoinder (doc. 4), which was served on the Applicants on the same date, and they said nothing.

12. The parties were heard on a virtual hearing held on 11th March 2025, in which they presented their oral submissions on the merits of the case. The case was adjourned for judgment on 8th April 2025, after the deliberation by the panel of Judges.

V. THE APPLICANTS' CASE

a. Summary of Facts

13. According to the Applicants, tensions during the 2010 presidential elections in Côte d'Ivoire escalated into armed conflict, resulting in serious violations of human rights and international humanitarian law.
14. It is in this context of armed conflict that the Applicants were all victims of sexual violence and other forms of violence between December 2010 and December 2011.
15. Gbela Guelalo Christine was raped when the military entered the town of Duékoué in March 2011. As she fled, she lost sight of her daughter Glomaho Juliana. She only found her daughter the next day and discovered that she had been raped by armed men who shot her in the foot to immobilize her and then abandoned her at the scene after the rape. She was discovered in the bush by Red Cross workers who immediately took her to hospital in Bangolo, where her leg had to be amputated.
16. As a result of this incident, Glomaho Juliana lost her speech, didn't smile or greet any men and died at the age of 20 from her injuries. Gbela Guelalo Christine's statement, her identity document, the complaint and other documents relating to her case are gathered as EXHIBIT 3.
17. Anicette Gbato Eldvige épouse (maiden name) Gompou was raped in December 2010, when a vehicle she was in was ambushed by highway robbers and overturned in the Duekoué corridor. As she trapped in the wrecked vehicle, two young men appeared, pulled her out of the bus and raped her.
18. They also raped the other female victims of the accident. Mrs. Anicette Gbato Eldvige Épouse Gompou was rescued by a passenger car with two people on board, who took her to hospital where she received first aid. Anicette Gbato Eldvige's complaint, the medical report and other documents relating to her violation are gathered as EXHIBIT 4.
19. Kaoume Tea Yvonne was raped by four individuals in March 2011 in her home, in the presence of her 14-year-old daughter Goman Dieumon Syprienne and her husband. Goman Dieumon Syprienne, 14, died of shock at the attack on her mother. Kaoume Tea Yvonne's complaint, her identity document, the medical report, the

medical report certifying the death of Goman Dieumon Syprienne and other documents relating to her rape are gathered as EXHIBIT 5.

20. Nouhouan Kouan Marie was raped in December 2011, when she and her 8-year-old daughter Messan Kantodeugo Béatrice were on their way from Danané to their village. On the way, they met four armed men dressed in military uniform, who took them into the bush and raped them both. Her daughter died three days later. Nouhouan Kouan Marie testified that she didn't go to the hospital because she was ashamed. Nouhouan Kouan Marie's complaint, her identity document, the medical report, the medical certificate attesting to Messan Kantodeugo Beatrice's death and other documents relating to her rape are attached as EXHIBIT 6.

21. The National Commission of Inquiry (CNI), commissioned by the Côte d'Ivoire government to investigate the events that took place between October 31, 2010 and May 15, 2011, issued a report in July 2012, which found that the violence and mass killings were the work of the various forces involved, including members of the armed group known as Forces Nouvelles, which became the FRCI, led by zone commanders and auxiliaries, young civilians and dozens of people who had joined their cause (EXHIBIT 7).

22. The complaints on behalf of the victims of sexual violence, dated December 6, 2012, were received by the Public Prosecutor's Office at the Abidjan Court of First Instance, in the Special Investigation Unit for the post-election crisis, West Zone, on December 7, 2012, and registered under numbers 042, 043, 045 and 047.

23. On February 25, 2013, and February 26, 2013, Ms. Kaoume Tea Yvonne, Ms. Gbato Eldvige Anicette épouse (maiden name) Gompou and Ms. Kouan Marie Nouhouan, as well as their minor daughter Glomaho Juliana, underwent a medical examination conducted by Professor Anongba Danho Simplice and Professor ADJOUA Rith Pascal, medical experts approved by the Ivorian Courts and Court of Appeal.

24. On December 10, 2013, the forensic reports on the four victims were transmitted to the Office of the Investigating Judge of the 9th Office responsible for the Victims of

the West, Court of First Instance (Special Investigation Unit for the post-election crisis in the West zone) and received on December 19, 2013, under No. 117.

25. By Order No. 2018-669 of August 6, 2018, the State of Côte d'Ivoire ordered an amnesty for people persecuted or convicted of crimes related to the 2010 post-election crisis or crimes against State security committed after May 21, 2011, with the exception of people on trial before an international criminal court and military personnel and members of armed groups.

26. By Judgment No. 361/2020 of July 29, 2020, the Investigative Chamber of the Abidjan Court of Appeal referred Wuermi AMande, alias Amade Ouremi, to the Abidjan Criminal Court to answer the charges against him (EXHIBIT 8).

27. On March 24th, 2021, the trial against the latter was opened before the Abidjan Criminal Court, during which Gbela Guélalo Christine was heard as a victim-witness and constituted as a civil party.

28. By decision No. 18 handed down on April 15, 2021, the Abidjan-Plateau Criminal Court found Mr. Wuermi Amande, alias Amade Ouremi, guilty of crimes against the population, pillage, kidnapping, assault and intentional assault, threats of death or violence, rape, attempted murder, forming and participating in an armed gang, robbery, group robbery, intentional destruction of movable and immovable property belonging to others, and arson of buildings, and sentenced him to life imprisonment.

29. However, the Court found inadmissible the civil action which sought to condemn the State of Côte d'Ivoire jointly and severally with the defendant Wuermi Amande, alias Amade Ouremi, and condemned the latter personally to pay various sums of money as compensation for damages to the 36 constituted civil parties, including 100,000,000 CFA francs in favor of Mrs. Gbela Guelalo Christine. Decision No. 18 of April 15, 2021, is attached as EXHIBIT 9.

30. The complaints filed by Kaoume Tea Yvonne, Gbato Eldvige Anicette épouse Gompou and Kouan Marie Nouhouan were dismissed due to Order No. 2018-669 of August 6, 2018, granting amnesty, thus depriving the Applicants of the benefit of the decision awarding reparations to the victims.

31. Order No. 2018-669 of August 6, 2018, is attached as EXHIBIT 10.

b. Pleas in Law

32. The Applicants cited:

i. Decree No. 2018-669 of August 6, 2018 on amnesty;

ii. Articles 1, 4, 5, 6, 7 (1) (a), 16 (1), 18 (4) and 26 of the African Charter;

iii. Articles 3, 4(1) and 14 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol);

iv. Article 3 of the Universal Declaration of Human Rights (UDHR).

v. Articles 2, paragraph 3 (b), 6 (1) (c), 9 (1) of the International Covenant on Civil and Political Rights (ICCPR).

c. Reliefs Sought

33. The Applicants concluded by seeking from the Court to:

i. Declare that the Defendant is responsible for the violation of:

a) The right to life, protected by Article 4 of the African Charter, Article 4 (1) of the Maputo Protocol, Article 3 of the UDHR and Article 6 (1) of the ICCPR;

b) The right to physical and moral integrity of the person, respect for the inherent dignity of the human person and security of the person, guaranteed by Articles 4, 5 and 6 of the African Charter, Articles 3 and 4 of the Maputo Protocol;

c) The right to health, protected by Article 16 of the African Charter and Article 14 of the Maputo Protocol;

d) The right to be heard and the right to a fair trial, protected by Articles 7(a) and 26 of the African Charter;

e) The obligations laid down in Article 1 of the African Charter.

ii. As a consequence of these violations, order the Defendant to:

a) Pay monetary reparations of 300,000 US dollars to Gbela Guelalo Christine; 300,000 US dollars to Nouhouan Kouan Marie, 300,000 US dollars to Kaoume Tea Yvonne, and 200,000 US dollars to Anicette Gbato Eldvige épouse (maiden name) Gompou. The Court is asked to order the payment of these reparations to the victims within one year of notification of the judgment. If manual payment is not possible, bank transfer will be made under the most favorable financial conditions permitted by the Defendant's banking legislation. Repairs paid for must be exempt from tax or any other deductions.

b) To revoke Order no. 2018-669 of August 6, 2018, on the amnesty.

c) Investigate the complaints filed by the four Applicants, with a view to prosecuting and punishing all perpetrators within a reasonable time.

d) To make a public apology to the victims within six months of the notification of the judgment on the merits. The State must consult the victims or their representatives on the modalities of the apology, such as where and when it should be made. The apology should be disseminated through the media.

e) Publish the judgment on the merits in an official government gazette, at its own expense, within six months of its notification.

f) Pay all expenses.

VI. DEFENDANT'S CASE

a. Summary of Facts

34. In the instant case, the Defendant claims that the illegal events took place in the midst of a post-election crisis, resulting from the refusal of the outgoing presidential candidate to recognize the results of the elections and his inauguration on December 4, 2010 at the Presidential Palace, as well as the inauguration of the elected candidate, on the same day, December 4, 2010, in writing, at the Hôtel du Golf;
35. The result was a total mess, with State in a mess, under the sway of a multitude of antagonistic actors: armed defense and security forces with their dismemberments known as FDS (supporters of the outgoing President), Armed Forces of the New Forces known as FAFN (supporters of the new President), militiamen, mercenaries and road cutters, leaders of armed gangs and other so-called "invisible" commandos (without any visible names);
36. That this situation continued throughout the country from December 31, 2010, to December 31, 2011;
37. That such violations cannot be described as "foreseeable", since before and during the ballot, before and during the counting of the votes and the proclamation of the results of the votes, everything had gone smoothly and no one expected the collapse of the State, as described above, which lasted a whole year;
38. The State cannot be held responsible for the alleged facts, since they do not constitute "foreseeable violations", i.e. capable of being "foreseen and prevented";
39. It follows that the complaint based on the foreseeable nature of the alleged violations is unfounded and must be rejected as such;
40. With regard to the complaint concerning the failure to identify the perpetrators of the alleged violations of the Applicants, they have been unable to identify the perpetrators of these alleged violations, to such an extent that they have filed a complaint against an unknown person; that, under these conditions, the Defendant State cannot be accused of violating human rights for violations that do not exist, and even less for the failure to identify the alleged perpetrators, who are and remain unknown;

41. Furthermore, in law, the alleged facts are offenses that affect a woman's privacy and the State can, except in cases of flagrant crime, which is rare, search for the perpetrators, let alone "identify" them, only on the basis of a complaint from the victims themselves or their heirs;
42. Now, while in this case, all the victims' complaints are directed against X, that is, against "unknown" perpetrators;
43. That, to this day, the perpetrators of the alleged acts remain unknown to the State, and even to the victims themselves;
44. That, in all cases, the Applicants have added to the file of the present application a judgment from which it appears that the facts alleged by them were prosecuted and tried by the Defendant's criminal justice system, on the basis of complaints from other victims, to which they gathered their complaints against Wuermi Amandé alias Amadé Ouérémi, an armed militia leader (see the application: EXHIBIT 9 relating to the judgment order);
45. That it follows from the cited judgment that the Defendant State respected the right of every human being to a fair trial, in accordance with Articles 7 and 26 of the African Charter;
46. That it also emerges from a report that the investigation into the case by the "Special Investigation Unit for the Post-Electoral Crisis in the Western Zone" at the Abidjan Court of First Instance rejected the Applicants' complaints on the grounds of unproven facts and ordered that the case be closed on those facts, since the inclusion of Dame Gbéla Gbélalo was justified by other facts unrelated to those alleged by the Applicants;
47. That with regard to the allegation that the Applicants suffered a total loss of 1,100,000 (one million one hundred thousand) US dollars, i.e. six hundred and seventy-three million, eight hundred and forty-nine thousand (673,849,000) CFA Francs, as a result of alleged human rights violations committed by the Defendant State against the said Applicants, it follows from the above-mentioned

demonstration that, in the absence of a violation committed by the Defendant State, the latter could not have caused any damage to the Applicants;

48. That, furthermore, this gratuitous accusation by the Applicants undermines the honor, reputation and dignity of the Defendant State;

49. The Defendant State also asks the Court to order the Applicants to pay, as damages, the sum of two billion (2,000,000,000) CFA francs, or three million two hundred and sixty-four thousand, eight hundred and twenty-six decimal, three hundred and ninety-two thousand, eight hundred and fifty-six (3,264,826,392.856) dollars, for abuse of judicial process, abusive and vexatious action and slander, on the basis of the general principle of law according to which "*any act of man that causes damage to another, obliges the person for whose act it occurred, to repair it*", as well as on the basis of the general principle according to which "*the honor, reputation or dignity of any natural or moral person are sacred and inviolable*";

50. However, the facts in question were overridden by Presidential Decree No. 2018-669 of 6 August 2018 on the amnesty of all offenses, criminal proceedings or convictions related to the 2010 post-election crisis.

b. Pleas in Law

51. The Defendant did not cite any legal provisions in support of its case.

c. Reliefs Sought

52. The Defendant seeks from the Court:

On jurisdiction:

i. To declare that it has jurisdiction to hear the application;

Or, alternatively:

On admissibility:

ii. To declare the application inadmissible in its current form;

Or, alternatively:

As to the merits:

iii. Declare the claim unfounded;

iv. Simply reject it.

53. Order the Applicants to pay the Defendant State, by way of damages, the sum of two billion (2,000,000,000) CFA francs, or 3,264,826,392,856 US dollars.

VII. ON THE JURISDICTION

a) On the alleged lack of jurisdiction of the Court

54. The Court takes note that the Defendant alleged the lack of jurisdiction of this Court to examine the application and its admissibility.

The Court's Analysis

55. Before addressing the parties' submissions on the Preliminary Objection raised by the Defendant, the Court must first examine whether the Defendant's objection complies with the Court's Rules.

56. Article 87 of the Rules of the Court on preliminary objections before the Court provides as follows:

"1. A party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application by a separate document.

2. The application must state the pleas of fact and law relied on and the form of order sought by the applicant and any supporting documents must be annexed to it."

57. The above provision implies that any preliminary objection before the Court must be presented in a separate application from the document in which the substantive

matters are addressed. This allows the Court to examine and decide on such an application separately.

58. Hence, the Defendant's Preliminary Objection was not submitted in a separate document, as required by Article 87(1) of the aforementioned Rules. Instead, the preliminary objection is found in the body of the statement of defense.

59. The Court is bound by the provisions of its Rules of Procedure, which guide litigants on how cases should be brought before the Court and the procedures to be followed. Therefore, an application that does not comply with the rules runs the risk of being rejected (see *MAHAMANE OUSMANE v. THE REPUBLIC OF NIGER*, Judgment No: ECW/CCJ/JUD/26/22, para. 47).

60. The provisions of the Protocol and the Rules of the Court are clear and unambiguous and must be complied with by the litigants before the Court (see *VISION KAM-JAY INVESTMENT LIMITED v. PRESIDENT OF THE ECOWAS COMMISSION*, Judgment No: ECW/CCJ/JUD/26/22, page 9).

61. Therefore, since the Defendant has not complied with the Rules of the Court regarding the manner in which a preliminary objection must be submitted, the Court decides that it will not proceed to examine the Defendant's preliminary objection.

62. The Defendant's preliminary objection is therefore dismissed.

63. Thus, in the instant case, the Applicants' allegations are based on the violation of his human rights contrary to the relevant provisions of the African Charter and other international instruments for the protection of human rights, in particular the ICESCR and the UDHR, as relied on.

64. In this sense, the present action falls within the scope of the jurisdiction conferred on this Court under Article 9 (4) of Protocol A/P1/7/91 on the ECOWAS Court of Justice, as amended by Supplementary Protocol A/SP.1/01/05, to hear cases of human rights violations occurring in any Member State, and the Court therefore considers that it has jurisdiction to hear the instant case.

VIII. ADMISSIBILITY

65. The admissibility of the application initiating proceedings is governed by the provisions of Article 10 (d), of Protocol A/P1/7/91 on the Court as amended by Additional Protocol A/SP.1/01/05, cited above, which provides that:

"*Can consult the Court (...) d) Anyone who is a victim of human rights violations. The request submitted for this purpose:*

i) Must not be anonymous;

ii) Will only be submitted to the Community Court of Justice if it has not been submitted to another Competent International Court (...)"

66. This provision requires that the Applicants demonstrate the capacity to bring an action as a victim; the claim must not be anonymous or pending before another internationally competent Court.

On the *Locus Standi* of the Applicants in relation to the alleged daughters

67. It is always imperative to determine the *locus standi* of n Applicant, as it proves to the Court that they have a sufficient interest in the action. In *FEDERATION OF AFRICAN JOURNALISTS & 4 ORS v. REPUBLIC OF GAMBIA, JUDGMENT No.: ECW/CCJ/JUD/04/18* (not reported) on page 17, the Court defined *locus standi* as "*... the interest in bringing proceedings before a Court or being heard in a particular case. In other words, the strict application of locus standi denotes that an [Applicant] who wishes to sue must have a sufficient interest in the matter to have standing to litigate. The position of the law at a global level has moved beyond insisting on the strict rule of legitimacy in cases of human rights violations.*"

First, second and fourth applicants

68. Article 10(d) of Protocol A/SP.1/01/05 confers legal standing on any victim of a human rights violation to access the ECOWAS Court. In cases involving deceased victims, the Court has recognized that direct family members, namely parents or children, can bring actions on behalf of the victims, as long as they unequivocally prove the existence of a family relationship and a direct and personal interest in the subject matter of the action.

69. However, the Court has been clear that when the capacity or legitimacy of the Applicant is called into question, the Applicant bears the burden of proving it by clear and convincing evidence. In the case of *Ebere Anthonía Amadi & 3 Outros v. Federal Republic of Nigeria* (ECW/CCJ/JUD/22/19, p. 13), the Court stated:

"It is common ground that, when an applicant's capacity is challenged, the applicant must, in order to obtain relief, establish that capacity by the clearest possible evidence."

70. This means that the mere allegation of kinship is not enough. Documentary evidence is required, such as birth or death certificates, medical reports or affidavits that unequivocally confirm the relationship between the Applicant and the deceased victim.

71. This understanding was reinforced in the case *SRA. HELEN JOSHUA & OTHER v. FEDERAL REPUBLIC OF NIGERIA* (ECW/CCJ/JUD/02/22, p. 21, §51), in which the Court recognized the *locus standi* of the First Applicant on the basis of a birth certificate submitted as evidence:

"The First Applicant has standing to bring this action, as she is a close relative of the deceased, as proven by her birth certificate (Exhibit 1), which shows that she is her biological mother."

72. In the same vein, the Court ruled in *MUHAMMAD AUWAL & 4 OTHERS v. THE FEDERAL REPUBLIC OF NIGERIA* (ECW/CCJ/JUD/04/22, p. 32, §66) that:

"It should be noted that a violation can affect both direct and indirect victims, as long as they have been identified and the link to the violation can be proven."

73. In the instant case, although the Applicant claim to be the mothers of the deceased victims, they have not presented any documents proving this relationship, such as birth certificates, hospital reports or any formal elements demonstrating the alleged relationship. In the absence of such essential elements, the Court cannot presume *locus standi* on the basis of allegations alone.

74. In the light of the case law referred to above, and considering the lack of documentary evidence of the family relationship, the Court must consider inadmissible the part of the action brought on behalf of the alleged deceased daughters. However, the action is still admissible in relation to the four main applicants, since they have identified themselves as direct victims of alleged violations of their human rights, being citizens of an ECOWAS Member State, and there is no other ground for inadmissibility.

IX. MERITS

75. The Court will now examine the human rights allegedly violated by the Defendant State, taking into account the questions as put forth by the Applicants for determination of the Court.

76. It should be noted that the rights to the physical and moral integrity of the individual, to respect for the inherent dignity of the human person and to security of the person will be analyzed together, since, in view of the facts alleged by the Applicants, these rights are interconnected, as will be explained below (in the same vein see African Commission, *EQUALITY NOW AND ETHIOPIAN WOMEN LAWYERS ASSOCIATION (EWLA) c. FEDERAL REPUBLIC OF ETHIOPIA (EQUALITY NOW)*, Communication 341/07, para. 116 et seq.)

a) On the alleged violation of the right to life

77. On the basis of the above analysis (paras. 69 to 75) and the absence of documentary evidence proving the family relationship between the Applicant and the alleged deceased victims, the Court finds that the Applicant do not have standing to bring proceedings on behalf of the said persons. Thus, since there is no *locus standi* with regard to the alleged deceased daughters, it is unnecessary to assess the alleged violation of the right to life, as invoked in this part of the action. The Court is precluded from hearing the merits of that claim, on the grounds that the Applicants lack standing to represent the interests of victims whose identity and family relationship have not been proven.

b) The alleged violation of the rights to physical and moral integrity of the individual, respect for the inherent dignity of the human person and security of the person

Applicants' Arguments

78. To support the violation of the aforementioned rights, the Applicants alleged that the forensic reports drawn up two years after the rape reveal that the victims felt that they had been dishonored, defiled and devalued for life; that all the victims have been subjected to inhuman and degrading treatment that has tormented them since 2011 until the time of filing this application; that the Defendant has not offered them any help to overcome the suffering they have gone through.

Defendant's Arguments

79. The Defendant argued, in summary, that the unlawful acts occurred in the context of a post-election crisis, and therefore could not be qualified as "foreseeable", insofar as, before and during the ballot, as well as during the counting of votes and the proclamation of results, the electoral process took place normally, without the collapse of the State being foreseen.

80. It also maintains that the State cannot be held responsible for the facts alleged, as they are not "foreseeable violations", i.e. those that could have been foreseen and prevented. It adds that the facts in question constitute offenses that violate a

woman's privacy and that, except in situations of flagrant crime, which are exceptional, the State can only take steps to identify the perpetrators if the victims themselves or their legitimate representatives lodge a complaint.

81. It also claims that the alleged perpetrators remain unknown, both to the State and to the victims themselves. It concludes that the facts invoked are covered by Presidential Decree No. 2018-669 of August 6, 2018, which granted amnesty to all offenses, criminal proceedings and convictions related to the 2010 post-election crisis.

The Court's Analysis

82. This right is provided for in Article 4 of the African Charter.

83. Article 3 of the Maputo Protocol also states that: "*1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.*

2. Every woman shall have the right to respect as a person and to the free development of her personality.

3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.

4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."

84. Article 4 of the same instrument provides that: "*1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.*

2. States Parties shall take appropriate and effective measures to:

(...) c) Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;

(...) e) Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;"

85. Article 5 of the African Charter also aims to protect both the dignity of the human person and the physical and mental integrity of the individual (see African Commission, *SUDAN HUMAN RIGHTS ORGANISATION, CENTRE ON HOUSING RIGHTS AND EVICTIONS c. SUDAN*, Communication No. 279/03, 296/05, para.155).

86. Article 4 of the Maputo Protocol provides for the rights of African women to live their lives free from all forms of violence. This right is expressed in the context of three fundamental rights: the right to life, integrity and security of the person, being free from all forms of exploitation, cruel, inhuman and degrading treatment. This article creates binding obligations for the State to eradicate violence against women.

87. Violence against women is a widespread violation of human rights and a form of gender discrimination. Violence against women constitutes an obstacle to the achievement of equality, development and peace, a violation of women's fundamental rights and freedoms and impairs or nullifies the enjoyment of these rights and freedoms (see UN Declaration on the Elimination of Violence Against Women (DEVAW) Preamble, arts 1 and 2).

88. Integrity rights are protections that seek to safeguard the control of someone's personality, free from intrusion and interference not consented to by third parties. Integrity is a broad right, sometimes considered a set of rights. When framed as "bodily integrity", this right includes issues such as the autonomy of physical integrity, privacy and self-determination rights. As a normative principle, integrity has also been widely invoked in health law and ethics. The rights to

integrity also extend beyond the physical body to protect against non-physical interference, including the protection of mental integrity.

89. In international law, the right to integrity is enshrined in different ways. Integrity is sometimes expressed as a component of the right to liberty and security (Articles 6 of the African Charter and 9 of the ICCPR are similar). For example, the Human Rights Committee (HRC) has defined the right to security of person as "*freedom from injury to body and mind, or physical and mental integrity*" (see UN Human Rights Committee (HRC) General Comment 35 on art 9, para 3; see also *THE REG. TRUSTEES OF JAMA'A FOUNDATION & 5 ORS v. NIGERIA & THE ATTORNEY GENERAL AND MINISTER OF JUSTICE OF THE FEDERATION*, ECW/CCJ/JUD/04/20, para. 104).

90. In other systems, the right to physical integrity is an autonomous right and a right distinct from security. For example, the African Charter provides for the right to "*integrity of the person*" in Article 4, alongside the right to life and the right to liberty and security under Article 6.

91. The jurisprudence of the African Commission has analyzed the right to the integrity of the person in its decisions in contexts of violence against women.

92. In above cited case *EQUALITY NOW v. ETHIOPIA,* the African Commission stated that "*outside the limits of the law, no one's physical integrity should be violated or exposed to the risk of violation, whether by State or non-State agents.*" In this case, the African Commission concluded that the rape constituted a serious violation of personal dignity, integrity and security, as guaranteed in Articles 4, 5 and 6 of the African Charter (see para. 116 et seq.).

93. The European Court of Human Rights (ECHR) has also developed case law on integrity rights in this context (see *Y v. SLOVENIA*, ECHR 41107/10, Application no. 41107/10).

94. As stated above, in addition to the aforementioned complaints from the Applicants describing the alleged acts of sexual violence they were victims of, the forensic reports on sexual violence, dated March 16, 2013, were also attached

to the case file, stating that the Applicants were left with sequelae allegedly caused by past sexual assaults.

95. The forensic medical report on the alleged sexual violence suffered by Applicant Anicette Gbato Eldvige, states, inter alia, that: "(...) *In short, the after-effects of the sexual assaults allegedly suffered by Mrs. Anicette Gbato Eldive, maiden name GOMPOU, two years after the facts, had negative consequences on her state of health through physical, psychological and psychosomatic damage. All these manifestations are compatible with the aggression she claims to have suffered (...)*" (see EXHIBIT 4, the contents of which are as if hereby reproduced in seriatim).

96. The forensic medical report on the sexual violence of Applicant Kaoume Téa Yvonne states, inter alia, that: *"(...) Thus, two years after the facts, the after-effects of the sexual assaults that Kaoume Tea Yvonne allegedly suffered have negative consequences on her state of health through the suffering endured and the physical and psychological damage. All these manifestations may be compatible with the aggressions she claims to have suffered (...)"* (see Exhibit 5, the contents of which are as if hereby reproduced in seriatim).

97. The forensic medical report on the sexual violence suffered by the applicant Nouhouan Kouan Marie states, in particular, that: '(...) *fifteen months after the events, the following can be observed: ... Mrs. NOUHOUAN KOUAN Marie has a permanent partial disability of 39% (...)*" (see Exhibit 6, whose content is as if hereby reproduced in seriatim).

98. The Court also notes that the aforementioned report by the Commission of Inquiry into violations of human rights and international humanitarian law shows that 196 cases of rape and other sexual aggression were officially recorded between October 31, 2010, and May 15, 2011. This report indicates, however, that this number is relatively small, given the intimate nature of this crime, which deeply affects women's dignity; that the report indicates that this number, 196 cases, is lower than the real number of cases.

99. Also, as alleged and proved by the Applicants:

a) By Ruling No. 361/2020 of July 29, 2020, the Investigative Chamber of the Abidjan Court of Appeal referred Wuermi Amande, alias Amade Ouremi, to the Abidjan Criminal Court to answer the charges against him (see Exhibit 8, the contents of which are as if hereby reproduced in seriatim);

b) By Decision No. 18 handed down on April 15, 2021, the Abidjan-Plateau Criminal Court found Mr. Wuermi Amande, alias Amade Ouremi, guilty of crimes against the population, pillage, kidnapping, assault and intentional assault, threats of death or violence, rape, attempted murder, forming and participating in an armed gang, robbery, group robbery, intentional destruction of movable and immovable property belonging to others, and setting fire to buildings, and sentenced him to life imprisonment. However, the Court found inadmissible the civil action that sought to condemn the State of Cote D'Ivoire jointly and severally with the Defendant Wuermi Amande, alias Amade Ouremi, and ordered him personally to pay various sums of money as compensation to the 36 civil parties that had been constituted, including 100,000,000 CFA francs to the Applicant Gbela Guelalo Christine (see Exhibit 9, whose content is as if hereby reproduced in seriatim));

c) The complaints lodged by Kaoume Tea Yvonne, Gbato Eldvige Anicette épouse Gompou and Kouan Marie Nouhouan were dismissed pursuant to Amnesty Order No. 2018-669 of 6 August 2018, thereby depriving the Applicants of the benefit of the decision awarding reparations to the victims. (See Exhibit 10 the the contents of which are as if hereby reproduced in seriatim).

149. As stated above, the Defendant claimed, in particular, that in any event, the facts in question were erased by Presidential Decree No. 2018-669 of August 6, 2018, on the amnesty of all offenses, criminal proceedings or convictions related to the 2010 post-election crisis.

100. It should be reiterated, however, as mentioned above, that States cannot invoke their domestic laws to exempt themselves from their international obligations.

101. The Court notes that, as already stated in the judgment *BARÉ MAINASSARA v. REPUBLIC OF NIGER,* ECW/CCJ/JUD/23/15, CCJE, LR (2015), the search for social cohesion and the reconstruction of the social fabric for better coexistence cannot be achieved at the expense of victims' rights. In fact, such consensuses must make it possible for violated rights to be maintained, or even compensated for, in order to achieve better acceptance of victims' rights.

102. Furthermore, according to the Basic Principles and Guidelines on the Right to a Remedy and Compensation for Victims of Gross Violations of International Rights, Human Rights Law and Serious Violations of International Humanitarian Law, remedies for human rights violations include the right of victims to adequate, effective and prompt reparation for the damage suffered.

103. Adequate, effective and prompt redress aims to promote justice through reparation for serious violations of international human rights law. A State must provide reparation to victims for acts or omissions that can be attributed to the State and constitute serious violations of international human rights law. Full and effective reparation must be provided to victims of violations of international human rights law, as set out in principles 19 to 23, which include the following forms: restitution, compensation-rehabilitation, satisfaction and guarantees of non-repetition (see *UNGA Res. 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 15*).

104. However, in the instant case, due to the aforementioned Presidential Decree No. 2018-669 of August 6, 2018, on the amnesty of all offenses, criminal proceedings or convictions related to the 2010 post-election crisis, it was not possible to pay the amount of compensation to the Applicant Gbela Guélalo Christine, determined in decision no. 18 handed down on April 15, 2021 by the Abidjan-

Plateau Criminal Court, as a way of ensuring adequate, effective and immediate reparation for the damage she suffered and, consequently, to promote justice, in the terms described above.

105. The same was true of the other Applicants, since it does not appear from the case file that an effective investigation was carried out following these complaints and medical reports.

106. It is reiterated that the Court is of the opinion that the alleged acts of sexual violence that the Applicants were victims of are not directly attributable to the Defendant State, since it is the result of an act by a private entity. However, the Court considers that the Defendant State is responsible for the fact that it did not respond adequately to the alleged acts of sexual violence that the Applicants were victims of, due to the lack of due diligence and the Defendant's inability to satisfactorily compensate the Applicants (see the aforementioned case *NOAH KAZINGACHIRE AND AL. v. ZIMBABWE*, paras. 132 to 134).

107. Furthermore, the Defendant State did not investigate or prosecute the perpetrators who committed gender-specific violations against the victims. The lack of effective investigation, with an outcome that brings the perpetrators to justice, demonstrates a lack of commitment on the part of the State to take the appropriate measures, especially when this lack of commitment is supported by excuses such as "*the State cannot be liable for the alleged facts, since they do not constitute "foreseeable violations"*, i.e. capable of being "foreseen and prevented" or that "*... all the victims' complaints are directed against X, i.e. against "unknown perpetrators"*. Furthermore, the failure to investigate compromises the international responsibility of the Defendant State, both in the case of crimes committed by State agents and those committed by private individuals.

108. The Court also takes the view that if the Defendant State, on the basis of an amnesty law, pardons those responsible for the atrocious acts of which the Applicants were victims, it must be held responsible for the damage caused by

those insurgents, and the amnesty must therefore be interpreted as ratifying the acts of the insurgents a posteriori, i.e. retroactively.

109. The effects of the rapes perpetrated against the victims can be seen in the medical records. The State therefore does not need any more information to carry out the investigation necessary to bring the perpetrators to justice. As the Inter-American Commission stated in *MARIA DA PENHA E MAIA FERNANDES V. BRAZIL*, a statement with which this Court agrees, "*ineffective judicial action, impunity and the inability of victims to obtain compensation are an example of the lack of commitment to take appropriate measures...*" (see Case 12.051, para. 57).

110. In this regard, the Court concludes that the rights to physical and moral integrity of the individual, respect for the inherent dignity of the human person and security of the person, guaranteed by Articles 4, 5 and 6, respectively, of the African Charter and Articles 3 and 4(1) of the Maputo Protocol, cited above, were violated by the Defendant.

c) On the alleged violation of the right to health

Applicants' Arguments

111. In support of the violation of the above right, the Applicants alleged that the forensic report, drawn up two years after the rape, indicates that Mrs. **Anicette Gbato Eldvige Épouse (maiden name) Gompou**, suffered physical, psychological and psychosomatic damage, reflected in chronic pelvic pain, vaginal discharge and itching, insomnia, abdominal and pelvic pain, and night terrors, terror at the sight of men in uniform, repeated periods of depression and anxiety with intense palpitations, very painful memories of the event with feelings of guilt for not having canceled her plans to travel to Danané and the feeling of having been dishonored, desecrated and devalued for life. That the doctor concluded that **Mrs. Anicette Gbato Eldvige Èpouse (maiden name) Gompou**, had a permanent partial disability of 26% and assessed that the elements of suffering were significant physical suffering at 6/7; significant

psychological suffering at 6/7; and the evolution of psychological trauma into an aggravation of psychological neurosis. She has not benefited from State assistance to date (Exhibit 6).

112. That with regard to **Mrs. Kaoume Tea Yvonne**, the forensic report reveals that two years after the rape she suffered from physical elements that caused gynecological and sexual damage, which were reflected in chronic vulvovaginal itching, chronic vaginal and pelvic pain, recurrence of vaginal discharge, pain during sexual intercourse, frigidity, disgust for sexual intercourse and a drop in libido. The elements of psychological suffering that cause psychological damage noted by the doctor are insomnia, night terrors, panic at the sight of men in military uniforms, repeated periods of depression with anxiety and intense palpitations, very painful memories of the event, aggravated by the death of her daughter, feelings of shame and the feeling of having been dishonored, of having been tarnished and devalued for life. In the doctor's opinion, Mrs. Kaoume Tea Yvonne has a permanent partial disability of 54%. The doctor assessed that the elements of Mrs. Kaoume Tea Yvonne's suffering were very significant physical suffering estimated at 5/7; very significant psychological suffering estimated at 7/7 and the evolution of the psychological trauma into a post-traumatic neurosis. She has not benefited from State assistance to date (Exhibit 7).

113. That the forensic report concluded that two years after the events, Mrs. **Nouhouan Kouan Marie** suffered gynecological, sexual and psychological injuries. That the doctor indicated that the gynecological damage was caused by a chronic pelvic inflammatory process, with its series of disabling symptoms (abdomino-pelvic and vaginal pain, vulvar and cutaneous dermatosis), the damage to sexuality would be the sexual incapacity marked by disgust for the sexual act, loss of libido, refusal of the sexual act by the spouse and the impossibility of procreation linked to the absence of sexual life with the spouse. She says that the psychological damage is suffered by psychosomatic pain, insomnia, night terrors, panic at the sight of men in military uniform or with

weapons, repeated periods of depression and anxiety with intense palpitations, painful memories of the events with the feeling of guilt for having been responsible for the death of her 7-year-old daughter, and the feeling of having been contaminated and devalued for life. In the doctor's opinion, Mrs. Nouhouan Kouan Marie has a permanent partial disability of 39%. The doctor assessed that Mrs. Nouhouan Kouan Marie suffered from significant physical suffering estimated at 6/7; very significant psychological suffering estimated at 7/7 and the evolution of psychological trauma into a worsening of psychological neurosis. She has not benefited from State assistance to date (Exhibit 8).

114. That Mrs. Gbela Guélalo Christine also suffers from the damage caused by the sexual violation with the indifference of the State (Exhibit 5).

115. The Defendant pleaded the same facts as above.

The Court's Analysis

116. The right to health has been enshrined in numerous international and regional human rights instruments, including the African Charter.

117. The UDHR is the first international human rights instrument to enshrine the right to health.

118. According to Article 25 (1) of the UDHR: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...*"

119. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most comprehensive article on the right to health in international human rights law.

120. Pursuant to Article 12(1) of the ICESCR, States Parties recognize "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*" while Article

12(2) lists, by way of illustration, a series of "*steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right...*"

121. Article 16 of the African Charter further establishes that:

> *"Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
>
> *2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.*"

122. The right to health has also been proclaimed under Article 14 of the Maputo Protocol.

123. The right to health operates directly or indirectly as a prerequisite for all the other human rights recognized by the African Charter. This principle was enunciated by the African Commission in the case *PUROHIT AND ANOR v. GAMBIA*, where it stated that "*Enjoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being and is crucial to the realization of all the other fundamental human rights and freedoms*". (see *PUROHIT Communication* no. 241/2001, para. 80, *EQUALITY NOW AND ETHIOPIAN WOMEN LAWYERS ASSOCIATION v. ETHIOPIA*, Communication No. 341/2007, para. 120, see also *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. THE FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/11/21, paras. 104 and 106).

124. It added that this right "*includes both health care and healthy conditions*" (see *SUDAN HUMAN RIGHTS ORGANISATION & CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) v. SUDAN*, Communication No. 279/03-296/05, para 208).

125. In General Comment No. 14 on the right to health, adopted in 2000, the UN Committee on Economic, Social and Cultural Rights stated that the right to health contains four elements: availability, accessibility, acceptability and quality, and

imposes three types of obligations on states - to respect, fulfil and protect the right. In terms of the duty to protect, the State must ensure that third parties (non-State actors) do not infringe on the enjoyment of the right to health.

126. The African Commission underlined that "*the fact that the right to health is an entitlement which is derived from specific obligations claimed by individuals from States, and it is very fundamental to the exercise of other human rights enshrined in the African Charter. In this regard, States have a legal obligation to protect the right to health of its citizens, including inter alia taking concrete and targeted steps towards the full realization of the right, and adopting legislation or other measures to ensure equal access to health-related services and health care.*" (see *EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS AND INTERIGHTS v. EGYPT*, Communication No. 323/06, para. 264).

127. In the instant case, the medical reports state that the victims were physically and emotionally traumatized as a result of the sexual violence and aggression against them. The trauma and injuries they suffered affected their physical, psychological and mental health.

128. The Court observes that it does not appear from the case file that the Defendant adopted the appropriate measures to enable the Applicants to recover a state of physical, mental and social well-being, that is, as mentioned, if, in particular, it carried out rehabilitation programs for the victims, as stated in the aforementioned Article 3(2)(e) of the Maputo Protocol.

129. In this regard, from the foregoing, it was found that the Defendant violated the provisions of Articles 25 (1) of the UDHR, 12 (1) of the ICESCR, 16 of the African Charter and 14 of the Maputo Protocol.

d) On the alleged violation of the right to a hearing and the right to a fair trial

Applicants' Arguments

130. In support of the violation of the above right, the Applicants alleged that the violations were brought to the attention of the Defendant's judicial authorities, which had an obligation to effectively investigate the violations within a reasonable time, to seek to punish the perpetrators and to grant adequate reparation to the victims; that despite the filing of complaints by the four victims on December 7, 2012, before the Public Prosecutor at the Abidjan-Plateau Court of First Instance (Special Post-Election Investigation Unit West Zone), only Ms. Gbela Guelalo Christine was taken into account in the trial and reparations in the Judgment of April 15, 2021; that given that the CNI report on which Judgment No. 18 of April 15, 2021 is based, was already available in 2012, there is no justification for the fact that the processing of the case at first instance took 8 years, 4 months and 8 days; that the compensation awarded to Christine does not take into account all the damage suffered; that as a result of the violations, Mrs. Gbela Guélalo Christine has lost much of her physical strength and has had to give up her charcoal production activity; that she has suffered a drop in income, which prevents her from paying for her children's schooling and, due to lack of financial means, four of her children have had to interrupt their studies. She also still needs medical assistance and psychosocial support.

131. That only Wuermi AMande, alias Amade Ouremi, was prosecuted and convicted, to the exclusion of all the zone commanders and other military personnel implicated by the National Commission of Inquiry. The latter also benefited from an amnesty order in 2018. Amnesty laws are incompatible with the obligation of States to prosecute "*serious and massive violations of fundamental human rights*".

132. The Defendant pleaded the same facts as above.

The Court's Analysis

133. Article 7 (1) of the African Charter further establishes that: "*Every individual shall have the right to have his cause heard. This comprises: the right to an*

appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

134. Article 26 also states that: "*States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.*"

135. This same right is enshrined in Article 2 (3) of the ICCPR, which states: *"(...) Any person whose rights or freedoms recognized in the present Covenant have been violated will have the effective means of appeal even if that violation was committed by persons who acted in the exercise of their official functions."*

136. Article 14 of the ICCPR also states that: *"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."*

137. Similarly, this right is provided for in Article 8 of the UDHR, Article 8(1) of the American Convention on Human Rights and Article 6 of the European Convention.

138. These standards, on the one hand, recognize that everyone has the right to bring his/her case before a competent court in the event of a violation of his/her fundamental rights and, on the other, impose an obligation on States to create effective structures so that citizens can defend their fundamental rights in the event of a violation (SEE *KAM SIBIRI ERIC c. ESTADO DO BURQUINA FASO,* ECW/CCJ/JUD/10/2023, para. 47, 48 e 49).

139. The right to a fair trial, protected by Article 7 of the African Charter and complemented by Article 26 of the same Charter, is a reinforcement of the principle of judicial independence and adequate justice in the African Human

Rights System. In this regard, the African Commission provided an insight into Article 7 (1) (a) in *KENNETH GOOD v. REPUBLIC OF BOTSWANA*, where it held that "*The right to be heard requires that the Complainant has unfettered access to a tribunal of competent jurisdiction to hear his case. It also requires that the matter be brought before a tribunal with the competent jurisdiction to hear the case.*" (see Communication No. 313/05, para. 169).

140. Similarly, the African Commission noted *in the ZIMBABWE HUMAN RIGHTS NGO FORUM v. ZIMBABWE*, that "*The protection afforded by Article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the right of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief.*" (See Communication n.º 245/2002).

141. To reinforce the spirit of Articles 7 and 26 of the African Charter, the African Commission adopted the Principles and Guidelines on the Right to a Fair Trial and to Legal Assistance in Africa (the Principles and Guidelines on the Right to a Fair Trial), to assist States Parties to the African Charter in their guarantee of the right to a fair trial as enshrined in the African Charter.

142. In this sense, the African Commission wrote that:

"*a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity. b) The right to an effective remedy includes: (i) access to justice; (ii) reparation for the harm suffered; (iii) access to the factual information concerning the violations.*" (see Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, p. 5).

143. The Court notes that the concerns, needs and interests of victims can only be addressed in judicial proceedings if they are impartial, taking into account the facts and the appropriate laws. The main concern must therefore be to ensure that

victims of human rights violations have recourse to the courts and are compensated accordingly. Access to the courts is a fundamental right under international law to which all victims are entitled. Not allowing victims to go to court, in the Court's opinion, is contrary to the guiding principles and spirit of the African Charter and other international and regional instruments.

144. The UN Human Rights Committee has stated that complaints must be investigated quickly and impartially if reparations are to be effective. In its General Comment No. 20, the Committee states that: "*complaints should be investigated promptly and impartially by the competent authorities in order to make the remedy effective.*" (see General Comment 20, Article 7 (Forty-fourth session, 1992), para 14).

145. The European Court also expressed the importance of carrying out thorough investigations that could lead to the identification and punishment of those responsible for any mistreatment. Furthermore, when examining whether an investigation is effective, the European Court has applied the following test in some of its cases: whether the authorities reacted effectively to complaints at the relevant time, the time taken for the investigation to begin and whether there were delays in taking statements from victims (see *LABITA v. ITALY* (2000), para. 131; *TIMURTAS v. TURKEY* (2001) 33 E.H.R.R. 6 ECHR. para. 89; *ASSENOV & OTHERS v. BULGARIA* (1998), para 105).

146. Thus, on the basis of the European Court, it follows that when victims make debatable allegations of having been ill-treated in violation of the African Charter, the investigation carried out must be prompt and impartial in order to be effective. An impartial investigation must involve a thorough or scrupulous procedure that leads to results that identify the perpetrators and punish those responsible for the ill-treatment and other alleged violations.

147. In the instant case, as stated above, due to the aforementioned Presidential Decree No. 2018-669 of August 6, 2018, which amnestied all offenses, criminal proceedings or convictions related to the 2010 post-election crisis, it was not

possible to pay the amount of compensation to Applicant Gbela Guélalo Christine, as determined in decision no. 18 handed down on April 15, 2021 by the Abidjan-Plateau Criminal Court, as a means of ensuring adequate, effective and immediate reparation for the damage she has suffered and, consequently, to promote justice, in the terms described above (see *A SOCIÉTÉ DE PROMOTION AGRICOLE ET INDUSTRIELLE, SOPAI, SA v. REPUBLIC OF COTE D'IVOIRE*, ECW/CCJ/JUD/48/2023, paragraphs 49 and 50).

148. The same was true of the other Applicants, since it does not appear from the case file that an effective investigation was carried out following these complaints and medical reports. This situation consequently prevented the Applicants from accessing the Defendant's courts, and consequently prevented their cases from being examined by the courts.

149. Accordingly, it was concluded that the Defendant violated the provisions of Articles 7 (1) (a) of the African Charter, 8 of the UDHR and Articles 2 (3) and 14 of the ICCPR.

e) On the alleged violation of Article 1 of the African Charter

Applicants' Arguments

150. To substantiate the violation of the above article, the Applicants stated that the Defendant did not prevent the massacres and violations that the Applicants suffered, nor did it deal with the criminal complaints diligently and swiftly; that only Wuermi Amande was arrested, while there were several other identifiable perpetrators; that the Defendant did not adopt any measures after 2012 to repair the damage suffered by the victims; that it also granted an amnesty to the perpetrators of the serious violations that the victims complained about.

151. On its part, the Defendant pleaded the same facts as above.

The Court's Analysis

152. Article 1 of the African Charter provides that:

"*Member States of the Organization of African Unity, States Parties to this Charter, recognize the rights, duties and freedoms set forth in this Charter and undertake to take legislative or other measures to give effect to them.*"

153. With regard to the above article, the African Commission has stated that "*Any violation of the provisions of the African Charter automatically means a violation of Article 1 of the African Charter and that goes to the root of the African Charter since the obligations imposed by Article 1 of the African Charter are peremptory" (see ZIMBABWE HUMAN RIGHTS NGO FORUM v. ZIMBABWE,* Communication No. 245/02, para 78).

154. In considering the alleged violation of Article 1, the African Commission in the JAWARA case *v. GAMBIA*, considered that "*Article 1 gives the Charter the legally binding character always attributed to international treaties of this kind. Therefore, a violation of any provision of the Charter automatically means a violation of Article 1.*" (See Communications 147/95, 149/96, para 46).

155. In the case of the C*OMMISSION NATIONALE DES DROITS DE L'HOMME ET DES LIBERTES v. CHAD,* the African Commission stated that "*The Charter specifies in Article 1 that the States Parties shall not only recognise the rights duties and freedoms adopted by the Charter, but they should also "undertake.....measures to give effect to them". In other words, if a State neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not the immediate cause of the violation.*" (see Communication 74/92, para 20).

156. The African Commission also refers to its decision in the case *AMNISTIA INTERNACIONAL v. SUDAN*, where it stated that "*ratification obliges a State to diligently harmonize its legislation with the provisions of the ratified instrument.*" It further stated that "*Article 1 of the Charter confirms that the government has legally bound itself to respect the rights and freedoms enshrined in the Charter and to adopt legislation to give effect to them*". (see

Communication 48/90, 50/91, 89/9, para 40 and 42; see also African Court on Human and Peoples' Rights, Application No. 005/2013, *THOMAS v. TANZANIA*, para 135).

157. Following the analysis of the other articles allegedly violated by the Defendant State, the Court considers that the violations committed by the Defendant State against the Applicants were motivated by the latter's failure to protect, promote and fulfill these rights, as required by the African Charter. Furthermore, the State's failure to thoroughly investigate the violations, to ensure that there is compensation to give fair satisfaction to the victims of wrongful death and to put in place mechanisms to protect the victims from further violations, also demonstrates the State's violation of Article 1 of the African Charter.

f) On the request to revoke Order N°2018-669 of August 6, 2018, on amnesty

158. The Court observes that the Applicants requested the repeal of Presidential Decree No. 2018-669 of August 6, 2018, on amnesty.

159. It should be noted, however, that the Court does not have the power to annul acts carried out by the competent authorities of the Member States. The Court can only examine whether these acts violate human rights, when so invoked, and in the event of a violation, order the State to pay compensation to the victims.

160. Accordingly, the claim is unfounded.

X. REPARATION

161. As a result of the violation of their human rights, the Applicants ask the Court to order the Defendant to pay monetary reparation of 300,000 US dollars to Gbela Guelalo Christine, 300,000 US dollars to Nouhouan Kouan Marie, 300,000 US dollars to Kaoume Tea Yvonne, and 200,000 US dollars to Anicette Gbato Eldvige épouse (maiden name) Gompou.

162. The violation of these rights entitles the Applicants to reparation, in accordance with the principle of international law which establishes that "*everyone who is a victim of a violation of his human rights is entitled to fair and just reparation*", bearing in mind that in the case of human rights violations, full reparation is, as a rule, impossible (see Judgment No. ECW/CCJ/JUD/01/06 in the case of *DJOT BAYI TALBIA & OTHERS v. FEDERAL REPUBLIC OF NIGERIA & ORS,* in CCJ ELR (2004-2009).

163. In view of the nature and diversity of the human rights violated and the consequences thereof for the Applicants, the Court considers it equitable to fix the amount of 30,000,000 (thirty million) FCFA for the Applicants Kaoume Tea Yvonne, Nouhouan Kouan Marie and Gbela Guelalo Christine and the amount of 20,000,000 (twenty million) FCFA for the Applicant Anicette Gbato Eldvige épouse Gompou, as compensation for the damage they have suffered.

XI. COSTS

164. The Applicants sought that the Defendant be ordered to pay the costs.

165. 178. The Defendant said nothing in relation to this relief sought.

166. Article 66 (1) of the Rules of the Court establishes that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

167. Paragraph 2 of the same article states that "*The unsuccessful party shall be ordered to pay the costs, if so decided.*"

168. Therefore, considering the circumstances of the case, the Court decides that the Defendant should bear the costs.

XII. OPERATIVE CLAUSE

169. For these reasons, the Court held a public hearing and having heard the parties:

With Regards to the form:

i. Declares that it has jurisdiction to hear the case.

ii. Declares that the application is admissible in relation to the four main applicants, but inadmissible in relation to the representation of their alleged daughters.

On the merit:

iii. **Declares as not established** the violation of the right to life by the Defendant in relation to the daughters of the Applicants Kaoume Tea Yvonne, Nouhouan Kouan Marie and Gbela Guelalo Christine, both deceased, guaranteed by Articles 1 and 4 of the African Charter; 2 and 6 of the ICCPR and 3 of the UDHR, cited above.

iv. **Declares verified** the violation of the Applicants' rights to physical and moral integrity of the individual, respect for the inherent dignity of the human person and security of the person, guaranteed by Articles 1, 4, 5 and 6, respectively, of the African Charter and Articles 3 and 4(1) of the Maputo Protocol, by the Defendant.

v. **Declares as established** the violation by the Defendant of the Applicants' right to health, guaranteed by Articles 25(1) of the UDHR, 12(1) of the ICESCR, 16 of the African Charter and 14 of the Maputo Protocol.

vi. **Declares as established** the violation by the Defendant of the Applicants' right to a fair hearing and trial, provided for in Articles 7 (1) (a) of the African Charter, 8 of the UDHR and 2 (3) and 14 of the ICCPR.

vii. **Declares as established** the violation of Article 1 of the African Charter by the Defendant.

viii. Dismisses all the remaining claims.

As for repairs:

ix. Pay damages to the Applicants Kaoume Tea Yvonne, Nouhouan Kouan Marie and Gbela Guelalo Christine, in the amount of 30,000,000 (thirty million) FCFA and to the Applicant Anicette Gbato Eldvige épouse (maiden name) Gompou in the amount of 20,000,000 (twenty million) FCFA.

x. Investigate the complaints lodged by the four Applicants, with a view to prosecuting and punishing all the perpetrators within a reasonable time.

xi. Make a public apology to the victims within six months of notification of this judgment.

Compliance and Reporting:

xii. Orders the Defendant State to submit to the Court, within three (3) months from the date of notification of this judgment, a report on the measures taken to implement the orders made herein.

XIII. ON THE COSTS:

170. Pursuant to Article 66 (2) of the Rules of the Court, the Defendant State shall bear the costs of the proceedings, which shall be settled by the Chief Registrar.

Signature:

Hon. Justice Ricardo C. M. GONÇALVES - Presiding/Judge Rapporteur

Hon. Justice Sengu Mohamed KOROMA - Member

Hon. Justice Edward Amoako ASANTE - Member

Dr. Yaouza OURO-SAMA - Chief Registrar

Done in Abuja on 8th April 2025, in Portuguese and translated into English and French.