IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY

OF THE WEST AFRICAN STATES (ECOWAS)

In the Matter of

SATTA LAMIN BANYA

v.

REPUBLICA OF SIERRA LEONE

Application No. ECW/CCJ/APP/51/21 - Judgment No. ECW/CCJ/JUD/15/25

JUDGMENT

ABUJA

On 20th March, 2025

SUIT No ECW/CCJ/APP/51/21

JUDGMENT No. ECW/CCJ/JUD/15/25

BETWEEN

SATTA LAMIN BANYA **APPLICANT**

AND

REPUBLIC OF SIERRA LEONE **DEFENDANT**

COMPOSITION OF THE PANEL

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

Hon. Justice Judge-Gberi-Be **OUATARA** - Member

Hon. Justice Edward Amoako **ASANTE** - Member

ASSISTED BY:

Aboubacar Diakite - Registrar

REPRESENTATION OF THE PARTIES

Gaye Sowe (Esq.)

Oludayo Fagbemi (Esq.)

Edmund Foley (Esq.) - Counsel for the Applicant

Attorney General - Counsel for 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. DESCRIPTION OF THE PARTIES

2. The Applicant, Mrs. Satta Lamin Banya, is a citizen of Sierra Leone, a Member State of ECOWAS.

3. The Defendant is the Republic of Sierra Leone, a Member State of the Economic Community of West African States (ECOWAS). It is a signatory to the ECOWAS Revised Treaty, the Protocol establishing the ECOWAS Court and its Supplementary Protocols.

Iii. INTRODUCTION

4. In the case, the Applicant, Mrs. Satta Lamin Banya, a peasant and politician in Sierra Leone, claims to have been brutally attacked after the 2018 presidential elections, when she supported an opposing candidate. She claims that while she was working on her farm, she was invaded by young men who assaulted her, raped her in front of her children and relatives, and set fire to her property. After the incident, she sought medical help and had to undergo surgery to save her life, resulting in the removal of her uterus. Despite reporting the attack to the police, none of the aggressors were held accountable, and she was left traumatized and without compensation or psychosocial support

IV. PROCEEDINGS BEFORE THE COURT

5. The application initiating proceedings (doc.1) was registered at the Registry of this Court on September 2, 2021.

6. On the same date, the Defendant State, Sierra Leone, was duly served, but did not lodge any defense.

7. On December 2, 2021, the Applicant filed an application for a default judgment (doc. 2), which was served on the Defendant, but the latter said nothing.

8. On December 13, 2024, the Applicant submitted an application to present additional evidence (doc.3), which was served on the Defendant, did not contest it.

9. At the virtual hearing held on January 30, 2025, to hear the parties on the merits of the case, the Applicant was represented and presented its oral arguments, while the Defendant State was absent. The case was adjourned for judgment on 20th March, 2025, after the deliberation by the panel of Judges.

V. THE APPLICANT'S CASE

a. Summary of Facts

10. The Applicant, Mrs. Satta Lamin Banya, a peasant and politician, actively participated in the 2018 presidential elections in Sierra Leone, supporting the candidate of the All Peoples Congress party, Mr. Samura Kamara.

11. On April 5, 2018, after the announcement of the results of the presidential elections which declared Mr. Julius Maada Bio the winner, Satta Lamin

Banya was at her farm located between Kailahun Town and Nyanyahun Village, accompanied by her children and some relatives.

12. While she was working on her property, it was invaded by several young men who attacked her, taking her and her relatives hostage and committing acts of brutal violence in the presence of everyone. The Applicant was violently assaulted by seven young men, including the act of inserting sand into her vagina. She was then dragged to the ground and taken to the village of Nyanyahun, where her farm was destroyed and set on fire by the attackers.

13. Rescued later that day, the Applicant reported the incident to the police and sought medical attention due to the serious internal injuries resulting from the attack. As a result of her injuries, she underwent emergency surgery which resulted in the removal of her uterus, irreversibly affecting her ability to have children.

14. Despite the report to the police, no effective investigation has been carried out to date, allowing the aggressors to remain unpunished. The Applicant continues to be traumatized by the violent attack and rape, while watching her attackers escape legal accountability.

15. The Applicant did not receive any compensation for the suffering caused, nor did she have access to rehabilitation services or psychosocial support, and was left helpless in the face of the devastating consequences of what happened.

b. Pleas in Law

16. The Applicant relied her claims on following Articles:

i. Article 33 of the Rules of Procedure of the Community Court of Justice, ECOWAS

ii. Articles 9(1), 9(4), 10(D) and 12 of the Protocol Establishing the Tribunal, as Amended by the Supplementary Protocol (A/AS.1/01/05);

iii. Articles 1, 2, 5 and 7(1) of the African Charter on Human and Peoples' Rights.

iv. Articles 2 (1), 3, 4 and 25 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);

v. Articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women; and

vi. Articles 2(1) & (3), 7 and 14 of the International Covenant on Civil and Political Rights.

v. Reliefs Sought

17. The Applicant concludes by praying the Court to:

i. A DECLARATION that the Republic of Sierra Leone has violated her rights of access to justice under Articles 1 and 7(1)(a) of the African Charter on Human and Peoples' Rights, Article 2(3) of the International Covenant on Civil and Political Rights and Article 25 of the Maputo Protocol.

ii. A DECLARATION that the Republic of Sierra Leone is legally responsible for the violation of her right not to be subjected to discrimination under Article 2 of the African Charter on Human and Peoples' Rights, Articles 2, 3(4) and 4(2) of the Maputo Protocol,

Article 2(1) of the International Covenant on Civil and Political Rights and Articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

iii. A DECLARATION that the Republic of Sierra Leone is legally responsible for the violation of her rights to dignity and not to be subjected to cruel, inhuman or degrading treatment under Article 5 of the African Charter on Human and Peoples' Rights, Article 3 of the Maputo Protocol and Article 7 of the International Covenant on Civil and Political Rights.

iv. AN ORDER that the Republic of Sierra Leone pay the Applicant financial compensation in the amount of one hundred and fifty thousand United States dollars (USD 150,000).

v. AN ORDER to the Republic of Sierra Leone to adopt the necessary legislative, administrative, social and economic resources to ensure the protection, punishment and eradication of all forms of sexual violence against women.

vi. AN ORDER that the Republic of Sierra Leone provide support services to victims of sexual violence against women, including information, legal services, health services and counseling.

VI. THE DEFENDANT'S CASE

18. The Defendant, although duly served, did not lodge any defense.

VII. PROCEDURE BEFORE THE COURT

On the Application for Judgment by Default

19. The Defendant did not submit any defense in response to the proceedings brought by the Applicant, despite having been duly served by the Court.

Application for judgment by default.

20. Following the Defendant's failure to file a defense, the Applicant, pursuant to Article 90 of the Rules, filed an application for a default judgment, asking the Tribunal to make the Declarations and issue the Orders set out in paragraph 17, the contents of which are as if hereby reproduced in seriatim.

The Court's Analysis of the Application for Judgment by Default

21. As the Defendant failed to present its defense within the thirty-day period it had to do so, the Applicant requested a Judgment by default, under the terms of Article 90 of the Regulations, which reads as follows:

22. Article 90 (1) "*If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.*"

23. Article 90(4) "Before giving judgment by default the Court shall, after considering the circumstances of the case consider: *whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the application appears well founded.*"

24. The requirements laid down in Article 90(4) relate to questions of jurisdiction, admissibility and evidence, which must be addressed before the merits of the application can be examined (see the case of *MOHAMED EL TAYIB BAH v. REPUBLIC SIERRA LEONE (2015) CCJELR ON PAGE 193).*

25. The facts presented to the Court show that the Applicant filed its originating application at the Court Registry on September 2, 2021. The Defendant was duly served on the same day but did not lodge a defense.

26. Pursuant to Article 35 of the Rules of the Court, the Defendant has 30 days from receipt of the application to submit its defense.

27. The Court has no record of any defense up to the date of the hearing of this Application. The situation provided for in Article 90(1) of the Rules of the Court has materialized, so the Applicant's request for the Tribunal to give judgment by default is pertinent.

28. However, when an application is made for judgment by default, it is for the Court, under Article 90(2), to ensure that all the requests made to it fall within its jurisdiction and that the application is admissible.

29. This means that the criteria of jurisdiction and admissibility should be checked before the judgment by default is delivered.

30. The Court notes, however, that the fact that a Applicant seeks judgment by default does not automatically mean that the action will be upheld, with the Applicant winning, since the Court must of its own motion examine questions of jurisdiction, admissibility and evidence before determining the merits of the legal proceedings. (see *MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE* (2015) (SUPRA) PAGE 6.

VIII JURISDICTION

31. In view of the above, the Court will first address the issue of jurisdiction.

32. Jurisdiction is an essential element in any judicial process. If a court does not have jurisdiction, any decision made, no matter how well-founded, will be null and void. See the case *TIDJANE KONTE & OTHER v. THE REPUBLIC OF GANA, RULING No. ECW/CCJ/JUD/11/14*, pg. 8.

33. Jurisdiction is crucial to any legal action. As a rule, the jurisdiction of the court is derived from the application submitted by the Applicant. In assessing whether this Court has jurisdiction to hear a case, it must rely on the facts provided by the Applicant, the relevant Court protocols and its own case law. See the case *FESTUS A.O. OGWUCHE v. THE FEDERAL REPUBLIC OF NIGERIA, JUDGMENT No. ECW/CCJ/JUD/02/18*, pg. 10.

34. Article 9(4) of the ECOWAS Court Protocol A/P.1/7/91, as amended by the Supplementary Protocol A/SP.1/01/05, grants this Court jurisdiction to adjudicate over human rights violations in any Member State.

35. When the facts involve allegations of human rights violations in a Member State, and the application is lodged by an individual, as provided for in Article 9(4) and Article 10(d) of the ECOWAS Court Protocol A/P.1/7/91 (as amended by Supplementary Protocol A/SP.1/01/05), and Article 5 of the African Charter, without there being a dispute pending before another international court, this Court is invested with jurisdiction. See the case of *MAIMUNA ABDULMUMINI v. THE FEDERAL REPUBLIC OF NIGERIA & 2 OTHERS, JUDGMENT No. ECW/CCJ/JUD/14/14*, pg. 10.

36. The mere allegation of a human rights violation in a Member State is sufficient to invest the Court with jurisdiction to hear the case, without

prejudice to the merits of the case, which will be decided after the presentation of evidence by both parties, in accordance with the right to a fair trial. See the case *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 OTHER v. THE FEDERAL REPUBLIC OF NIGERIA & 4 OTHERS, JUDGMENT No. ECW/CCJ/JUD/16/14*, pg. 25.

37. In the instant case, the Applicant came to claim violation of the right to a remedy and access to justice, violation of the right not to be subjected to discrimination based on gender, violation of the right to dignity and not to be subjected to cruel, inhuman or degrading treatment in accordance with the provisions of the African Charter on Human and Peoples' Rights, the ICCPR and other international treaties to which the Republic of Sierra Leone is a signatory.

38. The Court therefore declares itself competent to hear the instant case.

IX ADMISSIBILITY

39. It is a rule of common law that the competence to examine and decide an application is distinct from its admissibility. Admissibility refers to the assessment of whether the application will be accepted for consideration on the merits and, eventually, a final decision on the matters in dispute. It is worth noting that international human rights courts have developed the idea that admissibility rules should be applied with a certain "degree of flexibility and without excessive formalism". Human rights treaties must be interpreted and applied in such a way as to ensure that their safeguards are practical and effective (*YASA c. TURQUIA* - 1998 - VI; 28 EHRR 408).

40. In addition, access to the Court for examination of any application is granted if the requirements of Article 10 of the Supplementary Protocol are met. In the instant case, which involves allegations of human rights violations made by an individual, Article 10(d) states that:

> *"Individuals on application for relief for violation of their human rights; the submission of application for which shall: i). Not be anonymous; nor ii). Be made whilst the same matter has been instituted before another International Court for adjudication."*

41. In case *Hadijatou Mani Koraou v. Republic of Niger (Ruling No. ECW/CCJ/JUD/06/08)*, the ECOWAS Court stated that the admissibility of an application must be examined on the basis of the sufficiency of the facts and of the alleged violations.

42. Similarly, in the case of *Peter David v. Ambassador Ralph Uwechue (DECISION No. ECW/CCJ/JUD/03/13)*, the Court reaffirmed that the primary purpose of admissibility rules is to ensure that human rights are safeguarded in an effective and practical manner, applying procedural rules flexibly when necessary.

43. The Applicant identified herself as a victim of human rights violations. The Court finds that the application is neither manifestly unfounded under the above-mentioned article nor inadmissible for any other reason. As indicated in the Court's case law, the mere allegation of a human rights violation by an individual is, *prima facie*, sufficient to keep the case alive and proceed on to the analysis of the merits.

44. Consequently, the application is declared admissible.

In compliance with the appropriate formalities.

45. Having the Court has established its jurisdiction over the case and has ruled it admissible, Article 90(2) of the Rules of the Court also requires that the appropriate formalities set out in Articles 33, 34 and 35 of the Rules of the Court be complied with.

46. Articles 33 and 34 are provisions relating to the constituent elements of an application that may be accepted by the Court, as well as the details of the notification protocols, including the methods of notification. On the other hand, the provisions of Article 35 are instructions for the Defendant regarding the time limit for responding to an application.

47. Having carefully examined the documents submitted by the Applicant, the Court is convinced that the application for judgment by default complies with the aforementioned formalities. Furthermore, the application for default judgment is dated December 2, 2021 and duly served on the Defendant State, the has not said anything.

Whether the application is well-founded

48. Article 90(1) of the Rules of the Court orders that judgment by default be given on behalf of the Applicant when the Defendant fails to appear or file a defense.

49. The Court recalls that the granting of an application for judgment by default is not an obvious question, since the facts must be sufficiently proven. In other words, the Court must examine the totality of the evidence submitted by the Applicant in order to determine whether a cause of action exists and whether the claim has been satisfactorily proved (see *VISION KAM JAY*

INVESTMENT LIMITED v. PESIDENT OF THE COMMISSION & ANOR, DECISION No. ECW/CCJ/JUD/01/18. (2016) CCJELR PAGE 605).

X. MERITS

50. The Court will now proceed to examine the alleged violation to determine whether the allegations contained therein are well-founded.

a) The alleged violation of the right to a remedy and access to justice

51. The Applicant claims that in the context of the 2018 presidential elections in Sierra Leone, she was supporting Mr. Samura Kamara, candidate of the All Peoples Congress party for the presidential elections; that on April 5, 2018, it was announced that Mr. Julius Maada Bio had won the elections, that on the same day while she was working on her farm, it was invaded by several young men who took her and her relatives hostage, brutally raped her in the presence of her children and relatives, who after the rape, dragged her on the ground and took her to the village of Nyanyahun, where she was rescued; that she reported the incident to the police and also sought medical attention; that doctors had to remove her uterus to save her life and that there has been no effective investigation to date.

The Court's Analysis

52. The right to an effective remedy is guaranteed in Article 7 (1) (a) of the African Charter which states that: "*1. Every individual shall have the right to have his cause heard. This comprises:*

(a) 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;"

53. Similarly, this right is provided for in Article 2(3)(a) of the ICCPR, Article 8 of the UDHR, Article 8(2)(h) of the American Convention on Human Rights and Article 2 of Protocol No. 7 to the European Convention.

54. 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.

55. Regarding this right, this Court wrote in the case *AGRILAND CO. LTD. v. REPUBLIC OF COTE D'IVOIRE*, Judgment No. ECW/CCJ/JUD/07/15, that: "(...) *It can be deduced from these provisions that the right to an effective remedy before the national courts implies the opportunity available to everyone to defend their case before the national courts, which presupposes that the State must establish effective and efficient judicial structures before which every citizen can defend their case.*" (See §50).

56. Likewise, this Court in the case, *MONSIEUR IBRAHIM SORU TOURE AND MONSIEUR ISSIAGA BANGOURA v. LA RÉPUBLIQUE DE GUINÉE*, Judgment No. ECW/CCJ/JUG/03/16, § 87 stated that: *"(...) That an effective remedy is one that allows its author not only to present his petition to the competent authority (judicial or administrative), but also to obtain from it a decision that can be concretized in the facts."* (See also case *AMINATA DIANTOU DIANE v. REPUBLIC OF MALI*, Judgment No. ECW/CCJ/JUD/14/18, para. 42).

57. Therefore, it is this Court's understanding that the right to an effective remedy is one that allows the Applicant not only to seize the competent authority (judicial or administrative), but also to obtain from it a decision materialized in the facts.

58. In the instant case, in support of her claims, the Applicant attached four statements to the initial application, namely: from the Applicant; from Mr. Gbessy Thomas Jusu; from Mr. Abu Bakarr Kallay and from Dr. Daniel Lavalie, as shown in Exhibits 1, 2 and doc. 3, the contents of which are as if hereby reproduced in seriatim.

59. It should be noted that the Applicant describes the facts, stating in particular that several young men took her and her relatives hostage, brutally raped her in the presence of her children and relatives; that after the rape, they dragged her on the ground and took her to the village of Nyanyahun, where she was rescued.

60. The Applicant alleged that she reported the incident to the police; that she sought medical attention, that doctors had to remove her uterus to save her life and that there has been no effective investigation to date.

61. It should also be noted that paragraph 17 of the statement by Mr. Gbessy Thomas Jusu states that "*We even took her medical reports to the police, but they still didn't conduct any investigation.*" (See Exhibit no. 2, the contents of which are as if hereby reproduced in seriatim).

62. Furthermore, paragraph 37 of the Applicant's statement avers that "*The police gave me some papers to take to the hospital.*" (See Exhibit 1, the the contents of which are as if hereby reproduced in seriatim).

63. The sworn statements of the Applicant Satta Lamin Banya, Mr. Abu Bakarr Kallay, [Project Coordinator at the Centre for Accountability and Rule of Law (CARL), a non-governmental organization (NGO) in Sierra Leone, which is a local partner of the Institute for Human Rights and Development in Africa (IHRDA)], and Dr. Daniel Lavalie, show that all attempts to recover the medical and police reports were unsuccessful, as they

disappeared from the files of the competent authorities. Dr. Daniel Lavalie, the doctor responsible for examining the Applicant, confirms that the original medical report indicated a third-degree vaginal prolapse secondary to sexual assault, crucial evidence that could not be recovered due to the failure of the hospital authorities.

64. The inability to access these documents prevents the Applicant from gathering the necessary evidence to substantiate her complaint before national courts, compromising her chances of obtaining justice. The State of Sierra Leone's failure to preserve and provide evidence demonstrates a serious breach of its duty of due diligence, amounting to a direct violation of the applicant's right to an effective remedy.

65. In addition, the absence of an effective police investigation reinforces the State's responsibility. In the case of *Norbert Zongo and Others v. Burkina Faso (No. 013/2011)*, the African Court ruled that the State's failure to adequately investigate the murder of journalist Norbert Zongo amounted to a violation of the rights to freedom of speech and effective judicial protection.

66. The Court concluded that the absence of a diligent and impartial investigation by the State not only perpetuated impunity, but also discouraged other journalists from fully exercising their freedom of speech, creating an environment of fear and self-censorship.

67. Additionally, in the case of *Monim Elgak, Osman Hummeida and Amir Suliman v. Sudan* (*Communication no. 379/09*), the African Commission emphasized that the absence of a proper investigation by the State in response to allegations of torture and arbitrary detention constitutes a violation of the rights protected by the African Charter. The Commission stressed that States have an obligation to promptly and impartially

investigate all allegations of human rights violations, ensuring that victims have access to effective remedies.

68. The Court finds, in the light of the evidence presented, that the State of Sierra Leone failed in its duty to ensure an effective remedy for the Applicant, not only by failing to properly investigate the crime committed against her, but also by failing to ensure the preservation of the medical and police evidence essential to support her complaint.

69. Accordingly, the Court concludes that there has been a violation of the Applicant's right to an effective remedy and access to justice, in breach of Article 7(1)(a) of the ACHPR and Article 2(3) of the ICCPR.

b) The alleged violation of the right not to be subjected to discrimination based on gender

70. In support of her argument, the Applicant alleges that the sexual violence she suffered qualifies as gender-based violence and gender-based discrimination.

71. That even though the gender-based violence she suffered was perpetrated by a non-state actor, the State is responsible for failing to take due diligence to prevent the violation, by not taking the necessary measures to provide reparation to the victim.

The Court's Analysis

72. It follows from Article 2 of the Charter that:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law

shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

73. It should be borne in mind that, in cases of discrimination, Articles 2 and 3 of the African Charter must be interpreted jointly.

74. This right is also guaranteed in the Maputo Protocol, which obliges State parties to combat all forms of discrimination against women, as well as in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which defines discrimination against women as "*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*"

75. It should be noted that, although Article 2 of the Charter prohibits distinctions or differential treatment based on the grounds specified therein, not all forms of distinction can be considered discrimination (see Human Rights Committee, General Comment No. 18 - Non-discrimination, 1989, §8-13, Inter-American Court, Advisory Opinion No. 0C-4/84 of January 19, 1984, p. 104-106 §55 and 57; The European Court in the case *MARCKX C. BELGIUM*, No. 68/33/74, June 13, 1979; The African Commission, in case *KENNETH GOOD v. BOTSWANA*, Communication no. Application No. 006/2012, *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS v. REPUBLIC OF KENYA*, May 26, 2017).

76. In addition, the European Court of Human Rights has established the following criteria for determining prohibited discrimination: (a) the facts disclose differential treatment; (b) the distinction does not have an objective, i.e. it does not have an objective and reasonable justification; (c) and there is no reasonable proportionality between the means employed and the objective to be realized; (d) whether the situation of the Applicant is sufficiently analogous to that of individuals who benefit from better protection of the contested right. (See the cited case *MARCKX v. BELGIUM*, §49).

77. These criteria have also been adopted by other international judicial bodies for the protection of human rights (see, for example, the African Commission in the case *KENNETH GOOD v. BOTSWANA*, Communication No. 313/05, § 219 and 224). The African Court in the cited case "Ogiek" concluded that a distinction or differentiated treatment becomes discrimination, when it does not have an objective and reasonable justification and is not proportional.

78. The same criteria have been applied by this Court in determining prohibited discrimination, as is clear from its extensive case law (See the cases, *CNDD v. CÔTE D'IVOIRE*, Judgment No. ECW/CCJ/JUD/05/09, CCJ LR 2004-2009, p. 325; *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) & ANOR v. THE REPUBLIC OF SERRA LEONE*, Judgment No. ECW/CCJ/APP/JUD/37/19).

79. In the instant case, it is necessary to verify whether the Applicant has been treated differently on the grounds of her sex, which is unequal and prohibited by Article 2 of the African Charter.

80. It follows from the jurisprudence of this Court that an action based on Article 2 of the African Charter on discrimination, in order to be successful,

requires the Applicant to demonstrate that, being in the same circumstances, a person is treated differently from another person, to his/her disadvantage. (See the cases *AGRILAND CO. LTD v. REPUBLIC OF CÔTE D'IVOIRE*, Judgment No. ECW/CCJ/JUD/07/15, pg. 14, § 46, *THE NATIONAL CO-ORDINATING GROUP OF DEPARTMENTAL REPRESENTATIVES OF THE COCOA-COFFEE SECTOR (CNDD) v. COTE D'IVOIRE*, CCJELR (2004-2009) pg. 31).

81. This position of the Court is supported by the jurisprudence of other international courts for the protection of human rights. (See European Court, case *RATZENBÖCK AND SEYDL v. AUSTRIA* (Application no. 28475/12)).

82. In the instant case, the alleged ground for the discrimination is sex or gender.

83. As this Court observed in the case, *DOROTHY CHIOMA NJEMANZE & 3 ORS v. THE FEDERAL REPUBLIC OF NIGERIA, JUDGMENT No.* ECW/CCJ/JUD/08/17, pg. 40 that: *"A systematic operation targeting only the female gender provided evidence of discrimination"*. (See also the case, *MARY SUNDAY v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/11/18, pg.5).

84. In the instant case, following the understanding of the case law cited, it is our understanding that the Applicant does not allege or demonstrate that the police department failed to investigate and prosecute those accused of the alleged rape due to the fact that the Applicant was a woman and that this position was generally and systematically taken whenever the victim was female.

85. Nor has the Applicant made any comparison between her case and that of another person involved in the same or a similar situation of rape or victim of sexual crimes, who has been treated differently by the Defendant to her detriment, so as to justify the allegation of discrimination, contrary to Article 2 of the Charter, on any grounds.

86. Consequently, the Court finds that the Applicant's allegation of a breach of her right not to be subjected to discrimination by the Defendant is unfounded and unproven.

c) On the alleged violation of the rights to dignity and the right not to be subjected to cruel, inhuman or degrading treatment

87. The Applicant alleges that due to the failure to effectively investigate and prosecute the perpetrators of rape and other acts of violence against her, the Defendant State became legally responsible for the violation of her rights to dignity and the right not to be subjected to cruel, inhuman or degrading treatment, guaranteed by Article 5 of the Charter and 4 of the Maputo Protocol and 7 of the ICCPR.

88. She adds that the sexual abuse she suffered constitutes torture, cruel, inhuman and degrading treatment, since it consisted of so much pain and physical and emotional suffering.

89. That although the abuse cannot be directly attributed to the State, since it was not carried out by a State agent, the state is nevertheless responsible for the inability of its agents to successfully prosecute and punish offenders.

The Court's Analysis

90. The African Commission defined sexual violence as "*(...) Any non-consensual sexual act, threat or attempt to perform such an act, or forcing someone to perform such an act on a third person. These acts are considered non-consensual when they involve violence, the threat of violence or coercion. Coercion can result from psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or an individual's inability to consent freely. This definition should be applied regardless of the sex or gender of the victim and the perpetrator and the relationship between the victim and the perpetrator.*" (See GUIDELINES ON COMBATING SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA adopted in 2017).

91. Article 5 of the African Charter states that:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman of degrading punishment and treatment shall be prohibited."

92. It should be noted that the first instrument to guarantee this right is the Universal Declaration of Human Rights (UDHR) of 1948, by establishing in its Article 5 that: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

93. This right is also guaranteed in several other human rights protection instruments, namely the International Covenant on Civil and Political Rights (Articles 7 and 10) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

94. It is this Convention (CAT) which, in its Article 1 (1), defines the concept of "Torture" as:

"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." (A similar definition can be found in Article 2 of the Inter-American Convention to Prevent and Punish Torture).

95. The African Commission has followed the same understanding, as can be seen in the case *SUDAN HUMAN RIGHTS ORGANISATION & CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) v. SUDAN*, Communication no. 279/03-296/05§156.

96. And because everyone is entitled to the right to respect for the inherent dignity of a human being and recognition of his/her legal status, the prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute (see African Commission, GABRIEL SHUMBA v. ZIMBABWE, Communication No. 288/04, §167; Human Rights Committee, General Comment No. 20, §3).

97. As we have seen, Article 5 of the Charter aims to protect both the dignity of the human person and the physical and mental integrity of the individual and prohibits not only torture but also cruel, inhuman or degrading treatment.

98. This includes not only actions that cause serious physical or psychological suffering, but which humiliate the individual or force him/her to act against his/her will or conscience (See the aforementioned case *GABRIEL SHUMBA v. ZIMBABWE,* Communication No. 288/04, §164, *PTE ALIMU AKEEM v. FEDERAL REPUBLIC OF NIGERIA,* Judgment No. ECW/CCJ/JUD/01/14, §50).

99. From the above and following the definition of the concept of Torture given by the aforementioned Convention, it is possible to extract 3 essential elements for an act to be qualified as torture: 1-Infliction of severe mental or physical pain or suffering; 2-For or with the consent or acquiescence of State authorities; 3-For a specific purpose, such as obtaining information, punishment or intimidation (See HANDBOOK ON STATE OBLIGATIONS UNDER THE UN CONVENTION AGAINST TORTURE, pg. 24).

100. This understanding was also accepted by this Court in the case, *MR. NOEL MIAN DIALLO v. FEDERAL REPUBLIC OF NIGERIA & ANOR,* Judgment No. ECW/CCJ/JUD/14/19, pp.13 and 14 and also in the case *HON. JUSTICE ALADETOYINBO v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/18/20, § 66).

101. In the case *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/RUL/01/21, pg. 50 this Court, following international jurisprudence, considered that "*(...) Rape is an act that causes severe pain and suffering to the victim and amounts to torture" (*See §46-48) *and concluded with an understanding that* "rape and sexual violence amount to torture and ill-treatment" *(See also the case* MARY SUNDAY c. FEDERAL REPUBLIC OF NIGERIA. Judgment No. ECW/CCJ/JUD/11/18).

102. In the instant case, the Applicant seeks to hold the Defendant State responsible for the violation of her human rights to dignity and not to be subjected to cruel, inhuman or degrading treatment, because it failed to conduct an effective investigation to prosecute the perpetrators of rape and other acts of violence inflicted against her.

103. He also admitted that the sexual abuse was not carried out by a State actor and stressed that, even so, the Defendant must take responsibility for the violation of his rights, since it did not prosecute or punish the offenders.

104. Regarding the State's responsibility for acts of human rights violations, this Court wrote in the aforementioned case *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. FEDERAL REPUBLIC OF NIGERIA* that: *"States have the responsibility under international human rights law to respect, protect and fulfill the human rights in the treaties to which they are parties. In this sense, with regard to sexual violence, States are obliged to take measures to refrain from violating the rights of individuals; prevent sexual violence by non-State actors, investigate and prosecute all allegations of sexual violence and enact legislation to further guarantee the protection of individuals within their territory."* (see §65).

105. Also, with regard to the State's obligations to prevent sexual violence and its consequences, the African Commission wrote in its GUIDELINES ON COMBATING SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA adopted in 2017 that: "*States should take the necessary measures to prevent all forms of sexual violence and its consequences, in particular by eliminating the root causes of such violence, including sexist and homophobic discrimination, patriarchal prejudices and stereotypes about women and girls and/or prejudices and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain prejudices of*

masculinity and virility, regardless of their origin." (in accordance with Part 2 of these Guidelines) (See point 7).

106. And regarding the State's obligation to guarantee access to justice, investigation and prosecution of the perpetrators of sexual violence, was stated the following: *States should take measures to ensure access to justice for all victims of sexual violence, including in rural areas. States must ensure that investigations into acts of sexual violence and the prosecution of perpetrators are carried out:*

- without undue delay;

- independently, impartially and effectively;

- in a way that leads to the identification and conviction of the perpetrators." (See 9. 1. 9. 1).

107. In the same vein, this Court wrote in the case of *DOROTHY CHIOMA NJEMANZE & 3 ORS v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/08/17 pg. 42-43 that "*International law imposes a duty on States to investigate alleged infringements of the rights of their citizens, especially when formal complaints are lodged. In addition to any other acts or omissions imputed to the State or its officials, the failure to investigate such allegations constitutes, in itself, a violation of international law."* (See also in the same vein *WING COMMANDER DANLADI ANGULU KWASU v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/04/17 pg. 28).

108. In the same vein, and citing General Comment No. 2 UN DOC CAT/C/GC/2 of January 24, 2008, the sane judgment stressed that: *"The Committee has made it clear that when State authorities or others acting in an official capacity or under the appearance of law know or have*

reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State actors or private actors and fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State actors or private actors in accordance with the Convention, the State bears responsibility and its officials must be held perpetrators, accomplices or otherwise responsible under the Convention for consenting to or condoning such impermissible acts. Since the failure of the State to exercise due diligence to intervene and stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit impermissible acts under the Convention with impunity, the indifference or inaction of the State provides a form of encouragement and/or de facto permission. The Committee has applied this principle to the failure of States parties to prevent and protect victims of gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking."

109. In this case, following the case law cited above and the grounds of the General Comment, doc. 3, the request for additional evidence, substantially reinforces the Applicant's allegations. The statement of Dr. Daniel Lavalie, the doctor responsible for examining the Applicant, confirms that the medical reports indicated a third degree vaginal prolapse secondary to sexual assault, clear evidence of the seriousness of the violence suffered. Furthermore, the statements in paragraph 63 show that all attempts to retrieve the medical and police reports were unsuccessful, which raises serious questions about the conduct of the Sierra Leonean authorities in preserving key evidence for the case.

110. The State of Sierra Leone's failure to act is not limited to the lack of initial protection for the Applicant, but extends to its failure to conduct an effective investigation and to ensure an effective remedy. The failure to preserve medical and police documents constitutes a violation of the State's

duty of due diligence in protecting victims of sexual violence and punishing those responsible. This omission aggravates the Applicant's suffering and reinforces her status as a victim of fundamental rights violations.

111. The Court considers that the failure of the State of Sierra Leone to ensure an adequate process of investigation and accountability of the perpetrators of the violence suffered by the Applicant constitutes a violation of Article 5 of the ACHPR and Article 7 of the ICCPR.

XI. REPARATION

112. The Applicant sought from the Court:

- AN ORDER that the Republic of Sierra Leone pay the Applicant financial compensation in the amount of one hundred and fifty thousand United States dollars (USD 150,000).

The Court's Analysis

113. Financial compensation must be fair, adequate and proportionate to the damage suffered. The quantification of damages must take into account factors such as the gravity of the violation, the material and moral damage, and the psychological impact on the victim (Reaching for Justice: The Right to Reparation in the African Human Rights System (2013) (p. 63-67)). In situations where full documentation of damages is not available, the courts can apply the principle of equity to determine a fair amount of compensation.

114. Reparation for internationally wrongful acts requires the State not only to acknowledge its responsibility, but also to offer monetary compensation commensurate with the damage caused. The payment of compensation must be made in such a way as to restore, as far as possible,

the situation prior to the violation or, at the very least, to compensate the victim adequately for the damage suffered (see also the case, *CHIEF EBRIMAH MANNEH v. THE REPUBLIC OF GAMBIA*, Judgment No. ECW/CCJ/JUD/03/08 in LR 2004-2009, (§15) and *Moukhtar Ibrahim v. Government of Jigawa State & 2 Ors*, Judgment No.: ECW/CCJ/JUD/12/14, p. 40).

115. The Court finds that the Applicant suffered substantial damage, including the psychological impact of the violence. However, it considers that the sought amount of one hundred and fifty thousand US dollars (150,000 USD) has not been sufficiently justified in the case file. Based on the principles of fairness and proportionality, the Court adjusts the amount awarded to adequately reflect the damages proven, ensuring that the compensation is fair but does not constitute undue enrichment.

- AN ORDER compelling the Republic of Sierra Leone to adopt the necessary legislative, administrative, social and economic resources to ensure the protection, punishment and eradication of all forms of sexual violence against women.

The Court's Analysis

115. The Court of Justice of the Economic Community of West African States (ECOWAS) has reiterated that Member States have an obligation to adopt legislative and administrative measures to prevent human rights violations, including sexual violence. In the case *Dorothy Chioma Njemanze & 3 Ors v. Federal Republic of Nigeria (Judgment No. ECW/CCJ/JUD/08/17*), the Court ruled that Nigeria had failed to protect the Applicants from gender-based violence, emphasizing the need for legal and administrative reforms to prevent such abuses.

116. In *Aminata Diantou Diane v. Republic of Mali (Judgment No. ECW/CCJ/JUD/14/18)*, the ECOWAS Court highlighted the importance of States implementing effective measures to protect women's rights and prevent gender-based violence. The Court emphasized that the absence of such measures constitutes a violation of the State's international obligations.

117. The Court maintains its case law and therefore considers this claim to be well-founded.

- AN ORDER compelling the Republic of Sierra Leone to provide support services to victims of sexual violence against women, including information, legal services, health services and counseling.

The Court's Analysis

118. It is the understanding of the ECOWAS Court that victims of sexual violence have the right to adequate support services. In the case of *Women Against Violence and Exploitation in Society (WAVES) v. Republic of Sierra Leone (ECW/CCJ/JUD/37/19)*, the Court ruled that the lack of support services for victims constituted a violation of human rights, compelling the State to establish comprehensive assistance mechanisms.

119. It is therefore the Court's opinion that this order sought should succeed.

XII. COSTS

120. The Court recalls Article 66(1) of its Rules of its Procedure, which provides that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings*".

121. Furthermore, Article 66(2) of the Rules of Procedure provides that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings*".

122. On the basis of this provision, the Defendant not having made a statement throughout these proceedings, and the Applicant not having proved the violation of all the rights it claims were violated by the Defendant, the Court decides that each party shall bear its own costs.

XIII. OPERATIVE CLAUSE

123. For these reasons, the Court held a public hearing and having heard the applicant:

On Jurisdiction

i. Declares itself competent to hear the Application.

On the Admissibility:

ii. **Declares** the application admissible.

The merits of the case:

i. **Declares as established** the violation of the right to a remedy and access to justice.

ii. **Declares as not established** the violation of the right not to be subjected to discrimination based on gender.

iii. **Declares as established** the violation of the right not to be subjected to inhuman and degrading treatment.

Reparation:

iv. Orders the Defendant to pay the Applicant the sum of 30,000 dollars, as reparation for the violation of her human rights.

v. It also orders the Defendant to:

- Adopt the necessary economic, social, legislative and administrative measures to ensure the protection, punishment and eradication of all forms of sexual violence against women;

- Establish and maintain comprehensive support services for victims of sexual violence, guaranteeing legal, medical and psychosocial assistance.

ON THE COSTS:

124. According to the' decision, each party bears its own costs.

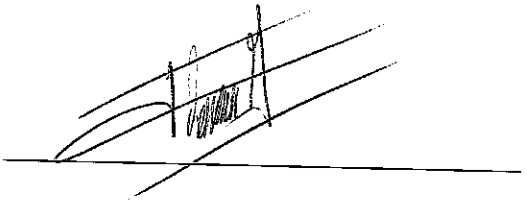
Signature:

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

Hon. Justice Judge - Gberi-Be **OUATTARA** – Member

Hon. Justice Edward Amoako ASANTE – Member

Assisted by:

Aboubacar Diakite – Register 

125. Done in Abuja on20th March, 2024, in Portuguese and translated into English and French.