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

In the Matter of

ADAMSAY KABIA & ANOR. v. REPUBLIC OF SIERRA LEONE

Application N°: ECW/CCJ/APP/09/24

Judgment N°: ECW/CCJ/JUD/36/26

JUDGMENT

ABUJA

25 June 2026

Application N°: ECW/CCJ/APP/09/24

Judgment N°: ECW/CCJ/JUD/36/26

1. ADAMSAY KABIA
2. ADVOCAID LIMITED **-APPLICANTS**

AND

THE REPUBLIC OF SIERRA LEONE **RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Ricardo Claudio Monteiro GONÇALVES -Presiding

Hon. Justice Dupe ATOKI -Member/Judge Rapporteur

Hon. Justice Edward Amoako ASANTE -Member

Assisted by

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION TO THE PARTIES:

Michael Gyan Nyarko
Juliet Mamawa Kaikai
Emilia Siwingwa
Oludayo Fagbemi, all of
Institute for Human Rights & Development in Africa - For Applicants

The Attorney General & Minister of Justice - For Respondent

I. JUDGMENT

1. This is a judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as "the Court") delivered virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The First Applicant, Ms. Adamsay Kabia, is a Sierra Leonean citizen currently detained at the Remand Home in Kingtom, Sierra Leone. The Second Applicant is AdvocAid Limited, a registered corporate entity in Sierra Leone, a civil society organization committed to promoting and protecting human rights, particularly women's rights. AdvocAid Limited joins this application to safeguard the public interest, invoking the principle of *actio popularis*.

3. Additionally, the Applicants have appointed the Institute for Human Rights and Development in Africa (IHRDA) as their agent.

4. The Respondent is the Republic of Sierra Leone, a Member State of The Economic Community of West African States (ECOWAS)

III. INTRODUCTION

5. This application is brought against the Republic of Sierra Leone, alleging multiple violations of regional and international human rights obligations arising from the State's failure to prevent, prohibit, investigate, and redress the harmful practice of child marriage, particularly in relation to one Adamsay Kabia and similarly situated girls in Sierra Leone.

IV. PROCEDURE BEFORE THE COURT

6. The initiating application dated 22/02/24 was lodged at the Court on 27/02/24 with the annexed affidavit evidence of three witnesses and other relevant annexures as evidence.

7. The processes were electronically served on the Respondent on 05/03/24.

8. The Respondent filed its defence and counterclaim, with relevant annexures, on 20/02/25, which was served electronically on the same date.

9. On 21/03/25, the Applicants filed a reply to the Respondent's submission of 20/02/25.

10. On 14/05/25, an external Court session was held in Lagos. Applicants were represented by Counsel in Court while the Respondent was absent and not represented. The case was heard on the merits. Applicants were granted 10 minutes to present their case. Respondent who joined the session afterward was also granted 10 minutes to present its case in opposition. The Applicant's right of Reply was duly exercised, and the case was adjourned for Judgment, with a date to be communicated to the parties.

V. APPLICANTS' CASE

a. Applicants' Summary of Facts

11. The first Applicant, Ms. Adamsay Kabia, is alleged to have been subjected to child marriage in 2017 at the age of eleven (11) when she was given in marriage to one Osman Kamara.

12. In January 2021, she was arrested for the alleged murder of Abu Bakarr Kamara, a three-year-old child and son of another wife of her husband. She provided a confession to the police, which indicated that she was 15 years old at the time.

13. On 22 April 2021, the first Applicant was convicted of murder and sentenced to be detained at the *Approved School* at the pleasure of the Respondent's President,

- Early and often unsafe pregnancies, with increased risk of maternal and infant mortality;
- Long-term reproductive health issues, including obstetric fistula;
- Heightened vulnerability to sexual and domestic violence;
- Mental health conditions, including depression, anxiety, PTSD, and increased risk of suicide;
- Social isolation and exclusion from educational and support networks.

19. They further submit that these effects are detrimental to the individual victims and constitute a broader violation of the child's rights and the obligations of the State under applicable human rights treaties.

20. The Applicants contend that the Republic of Sierra Leone has failed in its obligations to prevent, investigate, and eliminate child marriage and has re-victimised a minor, *Adamsay Kabia*, through criminal prosecution without addressing the initial rights violations she suffered. This application, therefore, seeks to hold the State accountable and to compel it to reform its laws and practices in conformity with its regional and international human rights obligations.

b. *Applicants' Summary of Pleas in Law*

21. On the Respondent's regional and international human rights obligations to eliminate the practice of child marriage, Applicants pleaded the following laws in support of their case:

- Articles 1, 16, 21, and 27 of the African Charter on the Rights and Welfare of the Child (ACRWC);
- Articles 5, 6(a), and 6(b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);

- Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and
- Article 18(3) of the African Charter on Human and Peoples' Rights (ACHPR).

22. On violation of freedom from gender-based discrimination, Applicants pleaded the following laws in support of their case:

- Articles 2 and 18(3) of the African Charter on Human and Peoples' Rights (ACHPR);
- Articles 1(f), 1(j), 2, 3(4), and 4 of the Maputo Protocol; and
- Articles 1, 2, 16(1)(b), and 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

c. Reliefs Sought by the Applicants

23. In light of the above facts and law, the Applicants sought the following reliefs from the Court:

a. ***A DECLARATION*** *that the failure of the Republic of Sierra Leone to take adequate measures to stop all incidences of child marriage is a violation of articles 1, 16, 21 and 27 of the African Charter on the Rights and Welfare of the Child; articles 5, 6(a) and 6(b) of the Maputo Protocol; article 16(2) of the CEDAW; and article 18 (3) of the African Charter on Human and Peoples' Rights;*

b. ***A DECLARATION*** *that the failure of the Republic of Sierra Leone to investigate the child marriage of Adamsay Kabia and to prosecute those involved is a violation of her rights under the provisions of articles 1 (1), 1 (3), 21 and 27 of the African Charter on the Rights and Welfare of the Child; articles 5, 6(a), 6(b) and 25 of the Maputo Protocol; article 16 (2) of the CEDAW; and, article 18 (3) of the African Charter on Human and Peoples' Rights;*

c. *A **DECLARATION** that the failure of the Republic of Sierra Leone to take adequate measures to stop all incidences of child marriage is a violation of the right to freedom from gender-based discrimination pursuant to articles 1 and 18 (3) of the African Charter on Human and Peoples' Rights; articles 1 (f), 1(j), 2, 3 (4) and 4 of the Maputo Protocol; and articles 1, 2, 16 (1)(b) and 16 (2) of the CEDAW.*

d. *AN **ORDER** for the Republic of Sierra Leone to amend the provisions of Sections 2(2) and 2(3) of the Registration of Customary Marriage and Divorce Act to state that the legal age of marriage is 18 years without exception;*

e. *AN **ORDER** for the Republic of Sierra Leone to effectively investigate the circumstances of the forced marriage of Adamsay Kabia and to prosecute all those involved under the provisions of Sections 34 (1) and 46 of the Sierra Leone Child Rights Act of 2007;*

f. *AN **ORDER** for the Republic of Sierra Leone to provide Adamsay Kabia free, immediate, adequate, and effective psychological or psychiatric support, through specialized public health institutions. In the event that the State does not have the staff or specialized institutions capable of providing the level of support required, it should call on specialized private institutions. The treatment shall continue as long as the health of the victim requires it;*

g. *AN **ORDER** for the Republic of Sierra Leone to pay financial compensation to Adamsay Kabia in the sum of Fifty Thousand US Dollars (US$ 50, 000), to be paid into a trust fund for her use when she attains the age of majority;*

h. ***ANY FURTHER ORDER*** *or Orders as the Court deems fit to make in the circumstances of this case.*

VI. RESPONDENT'S CASE

a. Respondent's Summary of facts

24. The Respondent, the Republic of Sierra Leone, challenges both the jurisdiction and admissibility of the present application. It avers that the application arises from the lawful conviction and sentencing of the First Applicant for the offence of murder by the High Court of Sierra Leone. Therefore, the matter concerns a domestic criminal prosecution lawfully adjudicated under its national legal system rather than a violation of any right protected under international human rights law.

25. According to the Respondent, the first Applicant was found guilty of the premeditated murder of a three-year-old child, Abu Bakarr Kamara, on 15 January 2021. The evidence at trial established that the Applicant lured the victim from his grandmother's compound, fed him caustic soda, and used his undergarments to strangle him before disposing of the body in a well.

26. The Respondent avers that the first Applicant confessed to the act and led the authorities to the site of the crime. They affirm that the first Applicant was of sound mind at the time of the offence, was duly represented by counsel from the Sierra Leone Legal Aid Board throughout the proceedings, and was afforded all the safeguards of a fair trial. Consequently, they argue that the Court lacks jurisdiction to entertain the matter, as the Application is, in substance, an attempt to challenge a final judgment of a competent domestic court, which falls outside this Court's jurisdictional mandate.

27. Additionally, the Respondent submits that the first Applicant failed to exhaust available domestic remedies, as no appeal was lodged against her conviction and

sentence. The Respondent maintains that the first Applicant cannot bypass national procedures and invoke the jurisdiction of this Court to re-litigate a criminal case already adjudicated at the domestic level.

28. Regarding the allegation that the first Applicant was subjected to child marriage, the Respondent denies the same but argues that, assuming the allegation was true, it has no bearing on the Applicant's culpability for the offense of murder. Concluding that child marriage is not and cannot be a defense to a charge of homicide under any legal framework.

29. Finally, the Respondent asserts that there has been no act or omission on the part of the Respondent State or its officials capable of engaging international responsibility under the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), or CEDAW. In their opinion, the application mischaracterizes a criminal prosecution as a human rights violation and urges the Court to find no breach of international obligation.

b. *Respondent's Counterclaim*

30. The Respondent, in what it styled as a counterclaim, contends that the first Applicant's actions constituted a serious criminal offence, the murder of a three-year-old child, which violated Article 4 of the African Charter on Human and Peoples' Rights (the right to life). The death certificate is annexed as (Annexure 1). Additionally, the deceased is alleged to have suffered degrading, cruel, and inhuman treatment in contravention of Article 5 of the Charter. Medical reports, autopsy findings, and photographs are tendered to substantiate the manner of death (Annexures 2–3).

31. Submitting under its counterclaim, the Respondent cited Article 3 of the African Charter (equality before the law) and asserted that both the deceased and the first

Applicant were afforded legal protection, and due process was observed in the first Applicant's arrest, trial, and conviction. The first Applicant was not arbitrarily detained, and her case benefited from the 2022 Abolition of Death Penalty Act.

32. The Respondent further argues that the first Applicant's right to a fair trial under Article 7 of the African Charter was fully respected. She was legally charged and represented by counsel at all stages, and there is no evidence of procedural irregularities or denial of appeal rights. The first Applicant's own confession to the offence was not contested during the trial (Annexure 4).

33. Additionally, the Respondent maintains that child marriage cannot serve as a defence against murder, and no proof of a valid marriage or coercion has been provided.

34. The Respondent challenges the Court's jurisdiction as an appellate body over national judicial decisions and contends that no medical evidence was presented during the trial to mitigate the Applicant's responsibility.

c. Respondent's Pleas in Law

35. The Respondent did not raise any new laws but argued its case under the provisions of the international instruments cited by the Applicants, where necessary, by distinguishing their applications using the following domestic legislation:

i. The 1991 Constitution of Sierra Leone (selected portion)
ii. The Child Rights Act 2007
iii. The Prohibition of Child Marriage Act 2024
iv. The Child Rights Bill 2022
v. The Registration of Customary Marriage & Divorce Act 2009
vi. The Sexual Offences Act 2012 (as amended)

d. Reliefs Sought by the Respondent

36. The Respondent, except where expressly admitted, denies all factual allegations raised by the Applicants and prays for the following reliefs:

i. ***AN ORDER*** *dismissing the suit as the Applicants have failed to show proof that the violations alleged are the act or omission of the Respondent or its agent of any violation pursuant to Article 10(c) of the Supplemental Protocol.*

ii. ***AN ORDER*** *to dismiss the application as the Applicants have failed to prove their claims under Articles 1(1), 1(3), 21, and 27 of the African Charter on the Rights and Welfare of the Child.*

iii. ***AN ORDER*** *to dismiss the application as the Applicants have failed to prove their claims under Articles 5,6(a) and 25 of the Maputo Protocol.*

iv. ***AN ORDER*** *to dismiss the application as the Applicants have failed to prove their claims under Article 16(2) of CEDAW and Article 18(3) of the African Charter on Human and Peoples Rights.*

v. ***DECALARATION*** *that Respondent's actions of initiating due legislative process will be considered reasonable and mitigate any decision the Court is likely to make.*

vi. ***AN ORDER*** *of compensation in favour of the Respondent for the loss of life, liberty, and integrity of Abu Bakarr Kamara as a result of a violation of Article 4 of the African Charter on Human and People's Rights.*

vii. ***AN ORDER*** *of compensation as a result of a violation of Article 5 of the African Charter on Human and People's Rights in favour of the Respondent for the loss of respect and dignity inherent in the being of Abu Bakarr Kamara and the recognition of his legal status.*

viii. ***AN ORDER*** *of compensation as a result of a violation of Article 3 of the African Charter on Human and People's Rights in favour of the Respondent, as the Applicant is in breach of this Article and has instead attempted to bring inequality*

of the law and want to jeopardise the legal principle of equal protection of the law and the equitable principle of ex injuria jus non oritur.

ix. ***AN ORDER*** *of costs in favour of the Respondent.*

x. ***ANY ORDERS*** *the Court deems fit in favour of the Respondent.*

VII. APPLICANTS' REPLY

36. In their reply, the Applicants argue that the Respondent's focus on the fairness of the first Applicant's murder trial is misplaced. The Applicants did not challenge the fairness of the trial or the conviction and sentencing in their originating application. The core issue before the Court is the first Applicant's status as a child bride, not the fairness of her murder trial.

37. The Applicants clarify that they acknowledged the first Applicant's arrest, trial, conviction, and sentence to detention at an *Approved School* for the murder of Abu Bakarr Kamara, as stated in paragraphs 5.1–5.4 of the originating application.

38. They emphasize that the Respondent's defense, which centers on the fairness of the murder trial, is irrelevant to the Applicants' claims. The real issue concerns the first Applicant's marriage as a child and the Respondent's failure to investigate and hold accountable those responsible for her child marriage.

39. The Applicants contend that the Respondent knew or should have known about the first Applicant's status as a child bride and had an obligation to investigate, prosecute, and punish those responsible. They rely on evidence drawn from the trial court record, and concerning the First Applicant, stated that she was unequivocally only 11 years old when she was married off in 2017 and 15 years old when she was charged with murder in 2021.

40. The Applicants argue that the Respondent's defense focuses primarily on the murder trial, which is not the issue before the Court, and urge the Court to disregard these irrelevant submissions.

41. Regarding the challenge to jurisdiction, the Applicants reject the Respondent's objection to the Court's jurisdiction, emphasizing that the case involves human rights violations concerning child marriage. The Applicants maintain that the Court has jurisdiction, as the allegations involve human rights violations under the African Charter and other international instruments to which the Respondent State is a party, as duly cited in the Applicants' pleas in law.

42. Regarding the Respondent's challenge to admissibility, the Applicants reject the challenge to the admissibility of the case under Article 10(c) of the Supplementary Protocol, arguing that the provision is misapplied and does not pertain to violations by member state officials. The Applicants contend that Article 10(d) of the Protocol is the appropriate provision, as it grants individuals access to allege human rights violations by Member States.

43. They submit that all the conditions for admissibility under Article 10(d) of the Protocol have been met, as both Applicants are properly identified, the first Applicant is the victim of the alleged violations, and the matter is not pending before any other international or regional court. The Applicants, therefore, urged the Court to reject the Respondent's objection on admissibility and proceed with the case based on the fulfilled conditions for admissibility under Article 10(d).

44. Regarding the merits of the case, the Applicants state that the Respondent State's defense is based on three main arguments. Firstly, the Respondent asserts that it has aligned its laws with regional and international human rights standards regarding child rights and marriage. Secondly, it claims that the first Applicant's murder trial was fair and conducted in accordance with domestic law. Thirdly, the Respondent

argues that the alleged violations of child marriage, sexual exploitation, and abuse were never formally reported to its agents. Therefore, the Respondent cannot be held responsible for failing to act.

45. The Applicants aver that only the first and third arguments are material to this case since the fairness of the first Applicant's trial is irrelevant to the case before the Court.

46. Regarding the Respondent State's laws on child marriage, the Respondent denies violating its obligations under the African Charter on the Rights and Welfare of the Child (ACRWC) and asserts that it has adopted appropriate legislation, such as the 1991 Constitution, the 2007 Child Rights Act, the 2012 Sexual Offences Act, and the 2024 Prohibition of Child Marriage Act, to fulfill its responsibilities under the ACRWC. The Applicants acknowledge these efforts but argue that the laws are inconsistent, particularly the Constitution, which includes exceptions allowing discriminatory practices related to marriage.

47. The Applicants assert that despite the enactment of the 2024 Prohibition of Child Marriage Act, the Respondent State remains liable for violations that occurred before its enactment. They contend that legislative measures alone are insufficient without effective implementation and enforcement, and the failure to investigate, prosecute, and punish the perpetrators of the first Applicant's abuse constitutes a breach of the Respondent's obligations under the ACRWC and other relevant instruments.

48. On the Respondent's argument that the alleged violations were not formally reported, the Applicants insist that the Respondent was or should have been aware of the violations, as evidence of the court records indicate the age of the first Applicant was a child bride and subject to abuse. The Applicants cite the requirement for the Respondent to act on any indication of a human rights violation, even in the absence of a formal complaint, particularly in cases involving vulnerable individuals like children.

49. The Applicants further argue that the Respondent failed to take action despite knowing or having reason to know about the violations at various stages of the first Applicant's murder trial. They contend that this failure to investigate and prosecute offenders constitutes a violation of the first Applicant's rights under the ACRWC, the Maputo Protocol, CEDAW, and the African Charter on Human and Peoples' Rights.

50. Regarding the Respondent's counterclaim, the Applicants argue that a counterclaim of this nature is baseless, as it contradicts the practice of this Court and falls outside the scope of Article 10(d) of the Protocol. They argue that the Respondent's counterclaim is an attempt to subject the first Applicant to double jeopardy and a dangerous precedent that could deter victims of human rights violations from seeking redress.

VIII. JURISDICTION.

Respondent's Submissions

51. The Respondent objected to the jurisdiction of the Court to entertain the matter as the Application is, in substance, an attempt to challenge a final judgment of a competent domestic court. They insist that the case before the national court was a homicide and a crime committed against the State, which was decided in the High Court of Sierra Leone. The instant application is thus an attempt to act as an appellate court over the domestic court, a jurisdiction it is bereft of.

52. Additionally, the Respondent submits that the first Applicant failed to exhaust available domestic remedies, as no appeal was lodged against her conviction and sentence. The Respondent maintains that the first Applicant cannot bypass national procedures and invoke the jurisdiction of this Court to re-litigate a criminal case already adjudicated at the domestic level. In all, the Respondent concludes that the Court lacks jurisdiction to entertain this application.

Applicants' Submissions

53. The Applicant, on the other hand, disagrees with the Respondent's objection to the Court's jurisdiction, emphasizing that their case involves human rights violations arising from subjecting the Applicant to child marriage and not the decision on the murder charge. They maintain that the Respondent's position is a confusion of issues and a complete deviation from the crux of the subject matter for determination before this Court. This, they maintain, is that the first Applicant was married as a child, and the Respondent knew or had cause to know but failed to investigate, prosecute, and punish the perpetrators in accordance with the human rights instruments.

54. Furthermore, they argue that the allegation that the Applicants are attempting to use this honorable Court as an appellate court over the decision of the Respondent State's domestic court or to make child marriage a defense to murder is unfounded, as these are unrelated to any of the substantive claims made by the Applicants. They therefore urged the court to dismiss the Respondent's objection to jurisdiction.

Analysis of the Court.

55. Jurisdiction is fundamental to any judicial proceeding. It must be clearly shown to exist at the commencement or during the proceedings; otherwise, such proceedings, no matter how well conducted, and any judgment arising therefrom, no matter how well considered or beautifully written, will be nullity and a waste of time. See HOPE DEMOCRATIC PARTY & ANOR. V FEDERAL REPUBLIC OF NIGERIA & ORS. (2015) CCJELR 345.

56. Thus, where jurisdiction is challenged, the Court is obliged to settle it and ensure its jurisdiction is appropriately invoked before proceeding with the matter. The Court therefore examines the facts as presented, and if convinced from the facts that there exists an element of human right violation, the Court will, in the absence of objection to the contrary, entertain the suit. CHIEF DAMIAN ONWUHAM & 22 ORS V. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/ 22/18 @ pg.8.

57. The first contention of the Respondent is that the Application is a challenge to a final judgment in respect of a murder case of a competent domestic court, which falls outside the jurisdictional mandate of this Court.

58. The Court reaffirms that its jurisdiction is grounded in Article 9(4) of the Supplementary Act SA.1/12/25 Relating to the Community Court of Justice, which empowers it to determine cases of human rights violations that occur in Member States of the Community. Under the Court's long-standing jurisprudence, this jurisdiction is properly invoked when an application alleges that human rights violations have occurred in a Member State and that the state is responsible for those violations, subject to a determination on the merits. See MOHAMMED MORLU V REPUBLIC OF SIERRA LEONE [ECW/CCJ/JUD/04/24], para 29.

59. In essence, a mere allegation is sufficient to invoke the jurisdiction of the court. See THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC & ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/12/22 @ para 29.

60. The instant case concerns an alleged violation of the rights of the first Applicant under the African Charter on the Rights and Welfare of the Child (ACRWC), the Maputo Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the African Charter on Human and Peoples' Rights (ACHPR) arising from the first Applicant's subjection to child marriage, sexual exploitation, and abuse.

61. Records have it that the Respondent signed the Maputo Protocol on 9 December 2003 and ratified the same on 30 September 2015; CEDAW on 21 September 1988, ratified on 11 November 1988, and ACRWC on 14 March 2002, ratified on 13 May 2002.

62. The Court agrees with the Applicants that their case involves human rights violations arising from subjecting the Applicant to child marriage and not on the decision on the

murder for which the first Applicant was charged. Thus, a re-litigation of the matter or sitting on appeal does not arise.

63. Consistent with its jurisdiction, the Court maintains that even if the instant case concerns a murder situation, it does not exercise an appellate jurisdiction over judgments of national courts *in abstracto*. See CHIEF AMBROSE ALBERT OWURU & ANOR. v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/01/22 @ Pg. 15 para 45.

64. Consequently, the Court holds that the present Application does not invite it to review, set aside, or otherwise sit on appeal over the decision of the national courts concerning the murder charge against the First Applicant. Rather, the gravamen of the Applicants' complaint concerns the alleged violation of their human rights arising from the circumstances surrounding the First Applicant's child marriage and the Respondent's failure to protect her rights.

65. Accordingly, the Court finds that the Application falls within its human rights jurisdiction and that the objection challenging the Court's jurisdiction on the ground that it constitutes an appeal against a national court decision is without merit and is hereby dismissed.

66. The second contention of the Respondent on jurisdiction is that the Applicant, having not exhausted local remedies, the Court is bereft of jurisdiction to entertain the instant matter. The Court is unable to accept this argument. It is now firmly settled in the jurisprudence of this Court that the exhaustion of local remedies is not a condition precedent to the exercise of its human rights jurisdiction. Unlike other regional human rights tribunals, access to this Court in human rights matters is not contingent upon the prior exhaustion of domestic remedies.

67. The Court has consistently reaffirmed this principle in a long line of authorities. reiterating that the exhaustion of local remedies is not a prerequisite for invoking its human rights jurisdiction. See MOUKTHAR IBRAHIM AMINU v. GOVERNMENT OF

JIGAWA STATE & 3 ORS ECW/CCJ/RUL/03/11 reported in (2011) CCJELR pg. 193 para 50. See also ALEX NAIN SAAB MCRÅN V, REPUBLIC OF CAPE VERDE ECW/CCJ/RUL/07/20 @ pg. 21 para 83.

68. In the instant case, the Applicant having alleged the violation of human rights guaranteed under several international human rights instruments to which the Respondent is a signatory, the court holds that its jurisdiction has been appropriately invoked. Consequently, the objection to the jurisdiction of the court based on non-exhaustion of local remedy by the Applicant and the alleged exercise of appellate jurisdiction by the court is accordingly dismissed.

69. Having said that, the Respondent sought an unusual relief based on a counterclaim for which the court must equally address to determine whether it is competent to adjudicate the claim.

On the Counterclaim of the Respondent.

70. The Respondent submits in its counterclaim that the applicant has trivialised the offence of murder committed and the arbitrary deprivation of the right to life of the 3-year-old Abu Bakarr. They maintain that the prosecution and subsequent conviction of the first Applicant for murder were lawfully undertaken in accordance with its domestic laws and the requirements of due process. On that basis, the Respondent raises a counterclaim against the first Applicant, alleging that her conduct violated Articles 3, 4, and 5 of the African Charter on Human and Peoples' Rights, which guarantee right to life, equality before the law, and respect for the dignity of the human person, respectively.

71. In view of the above, the Respondent claims compensation in an unnamed amount for the violation of these rights of the 3-year-old Abu Bakarr Kamara by the 1st Applicant.

Applicants' Response to the Respondent's Counterclaim

72. The Applicants submit that it is trite that a counterclaim is a distinct claim by a Defendant(s) against an Applicant(s) and as such is determined and judged separately. The generally known practice is that such a counterclaim must be based on pleaded facts, relevant laws or instruments, and concrete evidence. The Applicants stressed that a counterclaim of this nature is baseless, as it contradicts the practice of this Court and falls outside the scope of Article 10(d) of the Protocol, which did not contemplate a member state alleging human rights violations against an individual or NGOs having been regarded as primary duty bearers under international human rights law.

73. They argue that the Respondent's counterclaim is an attempt to subject the first Applicant to double jeopardy and a dangerous precedent that could deter victims of human rights violations from seeking redress.

Analysis of the Court

74. It is trite that most human rights courts/mechanisms operate on a unidirectional accountability framework whereby they adjudicate on matters of state responsibility for human rights violations, not bilateral disputes akin to civil litigation. The remedial functions of international human rights bodies are not designed to entertain reciprocity of claims to accommodate counterclaims.

75. This Court's jurisprudence has consistently emphasized that its primary mandate in human rights matters under Article 9(4) of the Supplementary Act SA.1/12/25 is to provide relief for human rights violations by Member States, not to entertain counterclaims in that regard. The court emphasizes that the remedial jurisdiction of the court in human rights matters is designed to be protective of victims only, and does not anticipate a grant of compensation for other parties or states in a traditional

civil law sense. This will amount to exercising jurisdiction over a violation of human right allegedly perpetrated by an individual.

76. As confirmed, "The Community Court of Justice does not have jurisdiction to entertain a dispute between individuals arising from alleged violation of human rights committed by one against another". PETER DAVID v. AMBASSADOR RALPH UWECHUE RULING NO. ECW/CCJ/RUL/03/10 Reported in 2010 CCJELR at page 226. "

77. Additionally, the first Applicant having been tried, convicted, and sentenced by the Respondent's domestic courts, this Court aligns with the Applicant's argument that the Respondent's counterclaim is an attempt to subject the first Applicant to double jeopardy and set a dangerous precedent that could deter victims of human rights violations from seeking redress.

78. The Court therefore finds that the Respondent State's counterclaim lacks legal foundation and is inconsistent with the mandate of the Court. The Respondent's counterclaim is hereby dismissed as baseless and inconsistent with the jurisdiction of this Court.

IX. ADMISSIBILITY

79. The Respondent contests the admissibility of the present application relying on Article 10 (c) of the Supplementary Protocol which grants access to *"individual and corporate bodies in proceedings from the determination of an act or inaction the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies,"* In other words, there must be an act or inaction of a community official which violates the rights of an individuals.

80. It is therefore the Respondent's submission that there has not been any act or inaction by the Respondent or its officials in the alleged complaint, but a criminal case of murder in which the first Applicant was found guilty of the killing of one Abu Bakarr Kamara, a three-year-old boy. Thus, further submitting that the Respondent should

not be compelled to respond to a breach of an international obligation which has not taken place under the submitted Articles.

81. The Applicants oppose the objection to the admissibility of the application, which was premised on Article 10(c) of the Supplementary Protocol, stating that this applies to violation by officials of the ECOWAS community and is therefore misapplied. The Applicants contend that Article 10(d) of the Protocol is the appropriate provision, as it grants access to individuals alleging human rights violations occasioned by Member States.

82. Relying on their submission in the originating application, they reiterate that this application satisfies all the conditions for its admissibility as the first Applicant is the victim of the alleged human rights violations and the second Applicant is an NGO duly registered in the Respondent State and party to the application pursuant to the *actio popularis* principle. Both Applicants are clearly identified in all the Court's processes, and the matter is not pending before any other international or regional human rights court. The Applicants, therefore, urge the Court to reject objections to the admissibility of this application.

Analysis of the Court

83. The admissibility conditions for an application for violation of human rights are clearly provided under 10 (d) of the 2005 Supplementary Protocol and equally captured under 10 (4) of the Supplementary Act SA.1/12/25. In that regard, the Court agrees with the Applicant that reference to Article 10 (c) of the 2005 Supplementary Protocol is inappropriate. The objection based on the same is therefore dismissed.

84. Having dismissed the Respondent's objection on admissibility of the Application, the court will now proceed to examine whether it complies with the conditions of admissibility laid down under Article 10(d) of the 2005 Supplementary Protocol which provided as follows: (a) the establishment of the Applicant's victim status or

standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter before another international court or tribunal. (*Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167, para 18).

85. From the facts presented, the Court notes that the application is not anonymous, nor is there evidence that it is pending before another similar international court or tribunal. However, the victim's standing in relation to the Applicants requires further elaboration.

86. Article 10(d) of the 2005 Supplementary Protocol provides that cases relating to human rights protection must be filed by an individual or a corporate body that fulfills the requirement of being a victim. This is the essential criterion that enables the Court to determine whether an application alleging a human rights violation is admissible, even though it is not the sole criterion. ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR OF GOMBE STATE & ANOR JUDGMENT NO ECW/CCJ/RUL/07/12.

87. A victim status has been severally interrogated by the courts in many instances leading to consistent decisions which in summary includes a person who suffers, directly or indirectly any harm or pain (physical or mental injury) emotional suffering (through loss of a close family member or relation) economic loss (loss of properties) or any impairment that can be categorized as human rights violation, additionally, other than the loss, harm or damage, the Applicant must prove an interest in the matter which must be direct and personal. REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO. ECW/CCJ/JUD/06/19 (Unreported), LA LIGUE SÉNÉGALAISE DES DROITS HUMAINS V. STATE OF SENEGAL ECW/CCJ/JUD/39/22 @ para 139. LAWRENCE H. JOTHAN AND 13 OTHERS v. FEDERAL REPUBLIC OF NIGERIA. ECW/CCJ/JUD/33/21, p. 26 para. 72.

88. This standard requires the Applicants to demonstrate prima facie that he or she was affected by the law, policy, practice, or conduct of the Respondent State, which is the cause of the alleged human rights violations. Such a victim can be direct, indirect, or

collective, provided there is a causal link between the victim and the harm claimed to have suffered.

89. In examining the victim status of the instant Applicants, the facts before the Court present two categories of Applicants, namely: The first Applicant, Ms. Adamasay Kabia, a citizen of Sierra Leone, and the second Applicant, AdvocAid Limited, a civil society organization. Each of them will be examined.

a. Status of the 1st Applicant

90. The first Applicant - Ms. Adamasay Kabia, is alleged to have been given away in marriage at the age of 11 years, sometime in 2017, contrary to many international human rights instruments that prohibit marriage below the age of 18 years. Therefore, being the subject-matter of a child marriage, which is a human rights violation, certain harm and suffering may be imputed to potentially qualify her as a victim. Nevertheless, in view of the allegation that she was given away in marriage as a child, it is necessary to further examine her age at the time of filing this application to determine her capacity to institute this action on behalf of herself.

91. Though the age of majority varies at most domestic levels, most international human rights instruments recognize the age of adulthood as 18 (eighteen) years, being the threshold of legal adulthood, marking the point when an individual gains full legal rights and responsibilities.

92. In that regard, Article 2 of the African Charter on the Rights and Welfare of a Child defines a child as: *"For the purpose of this Charter, a child means every human being below the age of 18 years."* This aligns with international standards set by the United Nations Convention on the Rights of the Child on the age of adulthood of a child.

93. As it concerns the first Applicant, while the facts placed before the Court confirm she was 11 years old when she was married off in 2017 and 15 years old when she was charged for murder in 2021, there is no evidence of her age at the time of filing this

action. However, records show that this Application was filed in 2024, three years after she was charged for murder at the age of 15.

94. Therefore, from a simple calculation, she was 18 years old at the time the instant application was filed and therefore within the adulthood threshold. Though being a child and a prima facie victim at the time of the murder but an adult at the time this application was filed, the Court declares she is capable of initiating this application in her own right and for her benefit. Her designation as the first Applicant is therefore in order.

b. Status of the 2nd Applicant

95. With regard to the victim status of the second Applicant, ADVOCAID LIMITED, the Respondent raised an objection to the admissibility of this application, arguing that, being a non-governmental organization that has not suffered any personal harm or injury, its status as a victim of human rights violation is untenable and incapable of sustaining the present application.

96. The Applicants, on the other hand, argued that since this application is a public-centric action, they are precluded from satisfying the victim status required of a non-governmental organization.

Analysis of the court

97. The general understanding of victim status or standing under Article 10 (4) of the Supplementary Act SA.1/12/25, as confirmed by the Court's jurisprudence, is that Applicants must demonstrate that they are, *prima facie*, victims of human rights violations attributable to the Respondent. In other words, they have been injured by the conduct of the Respondent (be it an act, omission, practice, law, amongst others) and therefore have a personal interest or stake in the matter. See AMNESTY INTERNATIONAL TOGO AND OTHERS V THE TOGOLESE REPUBLIC Supra.

98. Nevertheless, the Court has recognized situations where people other than the direct victims of a human rights violation can approach the Court on behalf of the victims. These include (a) actions brought by indirect victims (i.e., persons closely related to the direct victim and who potentially suffer indirect consequences of the human rights violation) (b) a representative action brought by an individual or NGO on behalf of an individual victim or a group with the authorization of such individual or group; (c) Public interest actions (*actio popularis*) brought by NGOs or public-spirited individuals for public good. See *STELLA IFEOMA & 20 ORS V FEDERAL REPUBLIC OF NIGERIA (2015) CCJELR @ PG. 7, INCORPORATED TRUSTEES OF CENTER FOR PEACE AND CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA FOUNDATION & 3 ORS V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/20/22 @ pg. 11 para 31, THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/08/21 @ pg. 20 Para 48.*

99. Concerning the standing requirement in this case, the second Applicant asserts that it *"has filed this suit in the public interest" and hence, "its claims are properly situated before this Honourable Court."* (*Initiating Application*, para 1.1). In assessing whether the Applicant is properly before the Court as a public interest litigant, the Court re-emphasizes that the key criteria for a public interest action are determined by whether "(i) the claim is brought to protect or enforce a collective or public right, or, in some cases, an individual right whose alleged breach has harmed the public or a large and indeterminate section of the public; and (ii) the reliefs sought are intended for the benefit of the public as a whole." PRINCE & PRINCESS CHARLES OFFOKAJA FOUNDATION, NIGERIA V FEDERAL REPUBLIC OF NIGERIA [ECW/CCJ/JUD/14/25], PARA 39.

100. From the above, a public interest action is characterized by a cause of action that any member of the public may be entitled to litigate to the extent that the facts or incidents underlying the case create a legal claim in which the public collectively has an interest. Essentially, the public interest encompasses concerns that affect the well-being and rights of the general public or a significant part of society. To this end,

breaches of collective or public rights (such as the rights to a healthy environment, self-determination, or development), which are by their nature held and enjoyed collectively or communally, are the primary catalysts for public-interest actions.

101. In the instant case, the Court notes that the rights whose protection the second Applicant seeks concern freedom from discrimination of women and gender-based violation affecting the girl child, which is enshrined in the following international human rights instruments;

- Article 1(1), 1(3), 21, and 27 of the African Charter on the Rights and Welfare of the Child,
- Article 5, 6(a) and 25 of Maputo Protocol,
- Article 16(2) of the CEDAW
- Article 18(3) of the African Charter on Human and Peoples' Rights. (ACHPR)

102. These provisions relate to the guarantee of the private rights of women and girls as against the public rights of the general public or an indeterminable group. However, the jurisprudence of the court has evolved to accommodate private rights generally held and enjoyed by individuals which may also form the basis for public-interest actions where the alleged breach has injured the public or a large, indeterminate section of it. ISAAC MENSAH V. REPUBLIC OF GHANA (ECW/CCJ/JUD/30/24) (para 76).

103. This principle was effected where the subject matter of the case concerns female genital mutilation (FGM), and the Court made the following observations about the *actio popularis* standing of the Applicants:

> *Regarding the First and Second Applicants, the Court notes, from the pleadings of both sides to the case, that FGM is a matter that affects the rights and wellbeing of a significant percentage of the female population of Sierra Leone. It is, therefore, a matter in respect of which a public interest action may be brought.*

103. Similar to FGM, child marriage, which is the subject matter of this application, is alleged to be a prevalent human rights issue in Sierra Leone that affects a large proportion of the population, namely young girls, who often have no one, including their families, to protect them. This informed the Applicants to seek reliefs for the Applicant and other girls in similar situation.

104. Indeed, in the *Amnesty International Report 2021/22 On the State of the World's Human Rights, on page 325*, featuring Women's and Girls' Rights in Sierra Leone, the report stated as follows:

> *"Early and forced marriage and female genital mutilation (FGM) were still prevalent. According to a Save the Children Report, Sierra Leone had the 18th highest child marriage rate in the world." (Published on 29 March 2022, page 325)*

105. In view of the above, the Court holds that child marriage, though essentially a private matter, is an abuse that affects the well-being and rights of a significant part of society in Sierra Leone, thus being of public interest that merits a public action.

106. Having held that child marriage, though a private right, is a matter in respect of which a public interest action can be initiated, the 2nd condition requiring the reliefs sought to be intended for the benefit of the public as a whole will now be examined.

107. Under the current requirements for actio *popularis,* in addition to the claim being brought to protect or enforce a public right, the reliefs sought should be intended for the benefit of the public as a whole. THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/16/20 @ pg. 19.

108. The Court notes that apart from the reliefs specific to the first Applicant, who herself is a party to the case, all the other reliefs sought are objectively of a nature intended for the benefit of the general public, particularly the female population of the

Respondent state. In that regards the court recalls and aligns with its decisions in FORUM AGAINST HARMFUL PRACTICES V SIERRA LEONE Supra, *where it held thus "Secondly, apart from the reliefs specific to the Third Applicant who herself is a party to the case, all the other reliefs sought are objectively of a nature intended for the benefit of the general public, particularly the female population of the Respondent state. Accordingly, the Court holds that the First and Second Applicants have standing as public interest litigants".*

109. Consequently, since the first Applicant is legally empowered to seek the said relief on behalf of herself, the Court finds that the condition requiring an actio-popularis action to seek redress for the public is met. The objection of the Respondent challenging the victim status of the second Applicant fails, and the Application is declared admissible.

XI. MERITS

Obligation of States Parties under International Human Rights Law.

110. The present case calls into question the Respondent's compliance with obligations arising from international and regional human rights instruments to which it is a party. Accordingly, before embarking upon an examination of the merits, the Court finds it appropriate to set out the applicable principles governing the obligations of States under international human rights law, as these principles provide the framework within which the facts and claims in this Application must be assessed.

111. Under international human rights law, once a State becomes a party to a human rights treaty (through ratification or accession), it assumes binding legal obligations toward all persons within its territory and jurisdiction. These obligations arise not as matters of political discretion, but as legal commitments undertaken in good faith, flowing directly from the treaty and the general principles of international law.

112. One of such principles, which is foundational, is the principle governing treaties between states known as *pacta sunt servanda*, codified in Article 26 of the Vienna Convention on the Law of Treaties, which states: *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*

113. These obligations are structured around three interrelated duties: the obligations to respect, protect, and fulfill human rights. See TIDJANE KONTE & ANOR V. REPUBLIC OF GHANA ECW/CCJ/JUD/11/14 @ PG. 12. DANIEL AGADA OKOH & 42 ORS. V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/04/21, AT P. 28, PARA. 77. SEE ALSO BACAR BIAI V. ECOWAS AUTHORITY OF HEADS OF STATE AND GOVERNMENT AND THE ECOWAS COMMISSION ECW/CCJ/JUD/13/22 @ PARA 40.

(i). Obligation *to Respect*

114. The obligation to respect requires the State to abstain from conduct that directly interferes with the enjoyment of protected rights. Any act or omission attributable to the State, whether through its legislative, executive, or judicial organs, that results in an unjustified infringement of a protected right constitutes a prima facie breach of this duty.

(ii) Obligation to Protect

115. The obligation to protect imposes a positive duty of due diligence on the State to prevent, investigate, punish, and redress human rights abuses committed by private actors, including individuals, groups, or corporate entities.

116. A State may therefore incur international responsibility not only for its own actions, but also for its failure to take reasonable and appropriate measures to shield individuals from foreseeable harm caused by third parties.

(iii) Obligation to Fulfil

117. The obligation to fulfil requires the State to adopt active measures aimed at ensuring the effective enjoyment of rights. This includes the enactment of legislation, the establishment of institutions, the allocation of resources, and the provision of accessible remedies.

118. Flowing from this principle, the African Charter on Human and Peoples' Rights, to which the Respondent is a signatory, provides the foundational basis for the imposition of obligations on State Parties arising from ratification of the Charter and, a fortiori, any international human rights instrument.

119. In that regard, Article 1 of the Charter is implicated, and it provides as follows:

> *"The Member States of the Organization of African Unity, parties to the present Charter, shall recognize the rights, duties, and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them".*

120. This Article is the introductory obligation clause of the Charter and is applicable to all rights and duties. It imposes an obligation on all State parties to recognize and adopt legislative, administrative, and judicial measures to give effect to the Charter's provisions.

121. The sum total of this principle is that, under international human rights law, States are not only required to enact appropriate laws but also to ensure their effective implementation to prevent and remedy violations of protected rights. MS. ROSE BREIVOGEL & ANOR. v. FEDERAL REPUBLIC OF NIGERIA. ECW/CCJ/JUD/05/22, AMINATA DIANATOU DIANE REPUBLIC OF MALI ECW/CCJ/JUD/14/18@ PG. 14 UNREPORTED.

122. Having said that, the Court will proceed to examine the merits of the case, which in substance is an allegation of the failure of the Respondent's obligation in respect of the following areas, which shall be examined seriatim:

i. Failure of the Respondent's Obligations to prohibit child marriage

ii. Failure of Respondent's Obligations to investigate the child marriage of the Applicant and to prosecute those involved.

iii. Violation of the Right to Freedom from Gender-Based Discrimination

i. On the Obligations to Prohibit Child Marriage

Applicants' Submissions

123. The Applicants allege that the Respondent, the Republic of Sierra Leone, failed to fulfil its obligations under various international and regional human rights instruments by not implementing adequate legislative, administrative, and institutional measures to prohibit and eliminate child marriage. Based on which they claim a violation of the following:

Articles 1, 16, 21, and 27 of the African Charter on the Rights and Welfare of the Child (ACRWC); Articles 5, 6(a), and 6(b) of the Maputo Protocol; Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and Article 18(3) of the African Charter on Human and Peoples' Rights (ACHPR).

124. This alleged violation is supported with the fact that the first Applicant was married off at the age of 11 years, and the Respondent's signatory to these instruments obliges them to prohibit child marriage, ensure the minimum age of marriage is 18 years, and protect children from harmful cultural practices and sexual exploitation. They assert that the child marriage of the first Applicant inherently violates these provisions and amounts to a failure of their obligation to prohibit child marriage.

125. Additionally, they contend that the failure to repeal provisions in the Registration of Customary Marriage and Divorce Act 2009, which permits marriage below 18 under customary law, is a continuing breach of Sierra Leone's international obligations.

126. They further submit that although the Respondent enacted the Prohibition of Child Marriage Act in 2024, this does not absolve it from responsibility for the harm suffered by the first Applicant prior to its enactment.

Respondent's Submissions

127. The Respondent State denies all allegations and submits that it has fulfilled its obligations through legislative and policy measures, including:

> The 1991 Constitution, The Child Rights Act 2007, The Domestic Violence Act, The Sexual Offenses Act 2012 (as amended), and The Prohibition of Child Marriage Act 2024.

128. They maintain that these laws prohibit child marriage, define a child as a person under 18 years, and criminalize harmful practices and sexual abuse. They assert that the Applicant's situation was never formally brought before any national institution prior to her prosecution and that her trial for murder was conducted in accordance with due process and international standards.

129. Relying on the jurisprudence of regional human rights bodies, the Respondent argues that mere allegations, unsupported by credible and sufficient evidence, are incapable of establishing the failure of their international responsibility as a State. The Respondent submits that, by enacting the Sexual Offences Act, 2012 (as amended), it has fulfilled its obligation to protect children from all forms of sexual exploitation and abuse and has put in place an adequate legal framework for the prevention and punishment of such acts.

130. The Respondent further argue that no complaint relating to sexual exploitation, sexual abuse, or any similar misconduct involving the Applicant was lodged before any competent State authority between 2020 and the commencement of the criminal proceedings against her for murder.

131. Accordingly, it cannot be held internationally responsible for matters that were never brought to the attention of its institutions, nor should it bear the consequences of the failure of the Applicant, her agents, legal representatives, or any other persons acting on her behalf to file a formal complaint prior to her arrest and prosecution.

132. On that basis, the Respondent urge the Court to dismiss the Application in its entirety as unsubstantiated and devoid of merit.

133. The Court must not fail to take cognizance of the Respondent's consistent defense that the murder trial was carried out with due regard to the law, as such precludes any imposition of any violation under the various international instruments submitted by the Applicants.

Analysis of the Court

134. The Applicants allege that the Respondent failed to fulfil its obligations under various international and regional human rights instruments by not enacting and implementing adequate legislative, administrative, and institutional measures to eliminate child marriage. The Respondent counters the allegation, maintaining their compliance with the obligation by citing several laws enacted in that regard.

135. In determining the alleged failure of the Respondent to prohibit child marriage, thus a failure of their obligation, it is imperative to identify the content and obligation arising from the international human rights instruments to which the Respondent is a signatory relative to child marriage. Following this, the Court will examine the allegedly enacted national laws to determine their compliance with the obligation imposed under the relevant international instrument. In that regard, the Applicants identified the following instruments as providing the basis for the obligation of the Respondent to prohibit child marriage.

136. Articles 1, 16, 21, and 27 of the African Charter on the Rights and Welfare of the Child (ACRWC); Articles 5, 6(a), and 6(b) of the Maputo Protocol; Article 16(2) of

the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and Article 18(3) of the African Charter on Human and Peoples' Rights (ACHPR).

137. The Court will only examine the Articles that speak specifically to the issue of child marriage.

The African Charter on the Rights and Welfare of the Child (ACRWC)

138. Article 1 of the ACRWC obliges States Parties to take all appropriate legislative, administrative, and other measures to give full effect to the rights and freedoms recognized in the Charter.

139. Article 21(2) places a mandatory obligation on States Parties to prohibit child marriage and betrothal of girls and boys. It further requires the enactment of legislation that sets 18 as the minimum age of marriage, without exception.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

140. Article 6(a) mandates that no marriage shall take place without the free and full consent of both parties, and Article 6(b) requires States to set the minimum age of marriage at 18 years.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

141. Article 16(2) requires States Parties to take all necessary measures, including legislative reform, to declare child marriages legally void. The article also mandates establishing 18 as the legal minimum age for marriage and the compulsory registration of all marriages.

The African Charter on Human and Peoples' Rights (ACHPR)

142. Article 1 enjoins Member States of the Organization of African Unity, parties to the present Charter, to recognize the rights, duties, and freedoms enshrined in the Charter and undertake to adopt legislative or other measures to give effect to them.

143. As indicated earlier, the obligation to fulfill requires the State to adopt active measures to ensure the effective enjoyment of rights. This includes the enactment of legislation, the establishment of institutions, the allocation of resources, and the provision of accessible remedies.

144. The combined effect of these Articles hold the Respondent under the obligation to recognise the rights enshrined in these instruments and adopt legislative or other measures to give effect to them. In other words, the Respondent is obliged to take legislative measures to prohibit child marriage and to specify 18 years as the minimum age of marriage.

145. This is in consonance with a Joint General Comment by The African Commission on Human and Peoples' Rights (ACHPR), and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), on the obligation of the State in specific reference to child marriage, which states in paragraph 18:

> *"The binding obligations set out in Article 6(b) of the Maputo Protocol and Article 21(2) of the African Children's Charter require States Parties to take legislative measures to prohibit child marriage and to specify that the minimum age of marriage shall be 18 years. States Parties should enact, amend, repeal or supplement legislation as appropriate to ensure that the betrothal and marriage of children under the age of 18 years is prohibited. This prohibition should be without exception and should apply to all forms of marriage."*

146. The key issue for determination before the Court, therefore, is whether the Respondent State failed to take appropriate legislative and other measures to prevent

child marriage resulting in the subsequent exploitation of the first Applicant, thereby violating its international obligations.

147. The Court recalls that in response to the alleged failure to prevent child marriage, the Respondent denies all allegations and submits that it has fulfilled its obligations through legislative and policy measures, including through enactment of the following: The 1991 Constitution; The Child Rights Act 2007; The Domestic Violence Act; The Sexual Offences Act 2012 (as amended); and the Prohibition of Child Marriage Act 2024.

148. They argue that these laws prohibit child marriage, define a child as a person under 18 years, and criminalise harmful practices and sexual abuse. Specifically on their obligation under Article 1(3) of the ACERWC, the Respondent state that the enactments of the Child Rights Act 2007 which amended the Prevention of Cruelty to Children Chapter 31 of the Laws of Sierra Leone by substituting eighteen years for sixteen years in defining the age of a child is conclusive of their compliance with the said obligation.

149. In that regard, the Respondent reiterates that the 2007 Child Rights Act sets the marriage age at 18 and prohibits marriage for anyone under the age of 18. Also, the newly enacted law, The Prohibition of Child Marriage Act 2024, and The Child Rights Bill 2022, in process, provide a similar prohibition of marriage for anyone under 18 years old.

150. Consequently, they maintained that they had put in place sufficient laws to prevent any inconsistency with customs, traditions, culture, or religious practices that are incompatible with the best international practices.

151. In examining these laws, beginning with the submission of the constitution and the special reference to its section 27 as proof of the legislative measure adopted by the Respondent, the court notes that, indeed, while the content of Article 27 of the

Constitution was recounted, it is the considered opinion of the court that it is a generic provision on non-discrimination which is not specifically implicated in child protection. Its scope is rather wide in situating the issue of child marriage and justifying the fulfilment of the obligation to adopt legislative measures as anticipated in Article 1 of the African Charter and the ACERWC.

153. Consequently, the court finds that Article 27 of the Constitution of the Respondent fails to satisfy fulfilment of its obligation to prohibit child marriage.

154. With regards to the other laws referenced by the Respondent, that is, The Child Rights Act 2007; The Domestic Violence Act; The Sexual Offences Act 2012 (as amended); The Prohibition of Child Marriage Act 2024 and The Child Rights Bill 2022, the Court takes cognisance of these laws and notes that they were annexed in their full complements. It, however, notes the absence of reference to the specific portion - article/section- of the laws that support the claim to have fulfilled their obligation.

155. This situation invites the Court to determine whether the Respondent has discharged its obligations under applicable human rights instruments by merely annexing legislations purportedly enacted to prohibit child marriage, without demonstrating their relevance, application, or effectiveness in addressing the specific violations alleged by the Applicant.

156. At the outset, the Court acknowledges that States bear the primary responsibility to respect, protect, and fulfil the rights of children, including the obligation to take all necessary measures to eliminate harmful practices such as child marriage. These obligations are not merely aspirational; they require concrete, demonstrable action. The proof of compliance with these obligations equally rests on the Respondent. Consistent with international standards on proof of human rights violations, a party alleging a fact must prove the same and affirming same the court held that "***After all, it is a cardinal principle of law that he who alleges must prove***". PETROSTAR

(NIGERIA) LIMITED v. BLACKBERRY NIGERIA LIMITED & ANOR, (2011) CCJELR 99, para. 33.

157. In the present case, as earlier indicated, in proof of their case, the Respondent annexed a series of legislative enactments, including, *inter alia*, the Child Rights Act 2007 and the Prohibition of Child Marriage Act 2024, asserting that their existence is sufficient proof of compliance with its obligations._However, beyond merely presenting these instruments, the Respondent has failed to identify with precision the specific provisions that directly address the violations alleged by the Applicant.

158. The Court finds that this approach is fundamentally inadequate. First, the mere enactment of legislation does not, in itself, discharge a state's obligations under international human rights law. The duty imposed on States goes beyond the formal adoption of laws; it encompasses their effective implementation, enforcement, and demonstrable impact. A State cannot rely on legislative formalism as a shield against accountability.

159. Second, the Respondent's submissions are deficient in that they place an undue burden on the Court to search through annexed materials to identify relevant provisions. It is not the role of the Court to construct the Respondent's case. Rather, it is incumbent upon the Respondent to clearly articulate and convince the Court of its compliance with the legislative measure that specifically prohibits child marriage with a provision of 18 as the minimum age for marriage. (Emphasis ours). As it stands, the court is unable to verify with certainty and satisfaction that these provisions are implicated in the laws cited.

160. The Court recalls that, in human rights adjudication, the burden of proof rests on the party asserting a fact, and such party must adduce sufficient and convincing evidence in support of its allegations. Consequently, where a State relies on domestic legislation or other factual assertions in its defence, it bears the responsibility of placing before the Court adequate evidence, including the relevant legal provisions,

to substantiate its claims. In this regard, the Court held in FEMI FALANA & ANOR. v. REPUBLIC OF BENIN & 2 ORS. (2012) CCJELR 1 that: *"The onus of proof is on the party who asserts a fact and who will fail if that fact fails to attain the standard of proof that would persuade the Court to believe the statement of the claim."*

161. The Court further observes that the standard of proof applicable before this Court is not identical to that generally applicable in ordinary civil proceedings before national courts. In *Falana*, the Court emphasized that while the standard is not as stringent as proof beyond reasonable doubt, it nevertheless requires a degree of persuasion that exceeds a mere preponderance of evidence. Accordingly, the Court stated that: *"...there is a slight difference, but the combined effect is higher in standard (before this Court) than preponderance of evidence, which is the standard in the National Court in civil cases."*

162. In elaborating on the nature of this burden, the Court in *Falana* relied on the authoritative writings of Judge Cheng in *International Courts and Tribunals* (OUP, London, p. 328), who explained that the burden of proof entails more than merely producing evidence. Rather, a party must adduce evidence capable of convincing the Court of the truth of its allegations. As stated therein: *"The burden of proof, however closely related to the duty to produce evidence, implies something more. It means that a party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want of sufficiency of proof."* Accordingly, allegations that are unsupported by cogent, credible, and persuasive evidence cannot succeed before this Court.

163. Accordingly, in the instant case, mere annexation of legislative instruments, without more, does not constitute sufficient proof of compliance with its obligations to prevent child marriage. Such an approach falls short of the duty to take concrete and effective measures to protect the child's rights.

164. Having failed to demonstrate, to the satisfaction of the Court, that it has adopted the necessary legislative measures to give effect to its international human rights obligations by enacting laws prohibiting child marriage and establishing eighteen (18) years as the minimum age for marriage, the Court finds that the Respondent has failed to effectively prohibit the practice of child marriage.

165. Consequently, the Court holds that the Respondent has failed to discharge its obligations under the relevant international and regional human rights instruments to prevent, prohibit, and eliminate child marriage. The Respondent is therefore found to be in violation of Articles 1 and 21(2) of the African Charter on the Rights and Welfare of the Child (ACRWC), Articles 6(a) and 6(b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Article 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Article 1 of the African Charter on Human and Peoples' Rights (ACHPR).

ii. On the obligation to investigate the Child Marriage of the First Applicant and to prosecute the perpetrators.

Applicants' Submissions

166. The Applicants' case is that the 1st Applicant -Adamsay Kabia was married off as a child, and the Respondent knew or ought to have known this fact, but failed to investigate, prosecute, and punish the perpetrators. They justified this claim on the basis that all the officials of the Respondent, from the police who investigated the murder case against her to officers of the Ministry of Justice who reviewed the file and recommended her prosecution, came to know that she was 15 years old at the time of the crime and was the third wife of Karama, the father of the deceased.

167. They support this averment relying on the untagged court record annexed next to Annexure 2, the Respondent's statement of defense, which has on its face that the

first Applicant was 15 years old, as of the time. On the face of the same court's record of proceedings is the starting point of the Evidence-in-Chief of Osman Kamara, where he stated that he is married to *"three wives, including the offender [first Applicant] in this court"*. Lastly, Applicants rely on the statement of the first Applicant tagged Annexure 4 by the Respondent, where it was boldly written that the first Applicant's "Occupation [was a] Housewife" and that her "Age [was]15 years".

168. They maintain that while legislative measures exist to prevent marriage and sexual violence, these are ineffective without proper implementation and enforcement. They therefore conclude that the Respondent's failure to take adequate measures including to investigate and prosecute the perpetrators despite knowledge of the age of the 1st Applicant, amounts to a failure of their obligation and a violation of Articles 1(1), 1(3), 21, and 27 of the (ACRWC); Article 25 of the (Maputo Protocol); and Article 18(3) of the (ACHPR).

Respondent's Submissions

169. The Respondent, on the other hand, contends that there is no evidence that the alleged violations were formally reported to any national authorities and argues that the first Applicant was afforded due process during her criminal trial, including legal representation. As with their defense on the obligation to prevent child marriage, they made heavy weather on the compliance with due process during the murder trial, which exonerates any failure of obligation on their part.

170. Consequently, the Respondent denied any failure to provide effective remedies by not investigating the child marriage of the 1st Applicant and finds no basis for finding a violation of Article 1(1),(3), 21 and 27 of the African Charter on the Rights and Welfare of the Child, Article 5, 6(a) 6(b) and 25 of the Maputo Protocol, Article 16(2) of the CEDAW and Articles 18(3) of the African Charter on Human and Peoples' Rights.

Applicants' response

171. In response to the Respondent's denial of responsibility for not having been formally notified of the child marriage, the Applicant reiterated that the absence of a formal complaint does not exonerate the Respondent. They submit that while the common means of contact with the information that a violation has occurred is through formal complaints lodged before law enforcement agents by victims, their families, or concerned citizens, it is also the responsibility of law enforcement agents to watch out for and detect crimes, and on their own initiative, investigate, prosecute, and punish offenders.

172. They maintain that this responsibility is particularly imminent where the victims belong to vulnerable groups, particularly children, as in the instant case, who might not be conscious of the violation, the right course of action, the opportunity to make the report, or even fearful of the consequences that await him/her should their violators learn of any attempt to report them. This responsibility by law enforcement agents of the Respondent State is particularly heightened because, in many instances, the relatives or family members who are supposed to protect such child victims are complicit in those violations and therefore require proactive measures from the Respondent State to protect such vulnerable victims.

173. The Applicant reiterates that the Respondent has sufficient notice of the violations suffered by the first Applicant as its agents, at different points, knew or had reason to know that the first Applicant had been subjected to child marriage, and consequently, sexual exploitation and abuse. However, they failed to investigate, prosecute, and punish the perpetrators. Consequently, the Respondent is in violation of the first Applicant's rights under Articles 1(1) & (3), 21 and 27 of the ACRWC, Articles 5, 6(a)&(b), and 25 of the Maputo Protocol, Article 16(2) of the CEDAW, and 18(3) of the African Charter on Human and Peoples' Rights.

Analysis of the Court

174. The *obligation to protect* imposes a positive duty of due diligence on the State to prevent, investigate, punish, and redress human rights abuses committed not only by State parties but by private actors, including individuals, groups, or corporate entities. This is reflective in Article 25 of the Maputo Protocol, which requires State Parties to undertake to provide for appropriate remedies to any woman whose rights or freedoms have been violated and ensure that such remedies are determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by law. In this context, "woman" includes girls.

175. A failure to fulfil this obligation amounts to the violation of the relevant human rights instrument. This is consistent with the Court's jurisprudence where it affirmed that *"Where a State fails to conduct an inquiry into specific violations, with the expected outcome of ensuring that the perpetrators are brought to book, it constitutes proof of lack of commitment on the part of such State to take appropriate measures to address the violations at stake; that the absence of inquiry in such an instance makes the State blamable for default on its international responsibility"*. See AMINATA DIANTOU DIANE v. REPUBLIC OF MALI, Judgment No. ECW/CCJ/JUD/14/18 @ pg. 14.

176. In the present case, the Respondent argues that there was no formal report of child marriage to any national authorities, and therefore, they cannot be held in violation of their obligation to prosecute the act of child marriage.

177. The Court observes that the duty to investigate, particularly in cases involving children and vulnerable individuals, is triggered not only by formal complaints but also by circumstances that give rise to a reasonable suspicion of abuse or violation. States are required to act with due diligence to prevent, investigate, and punish all acts of violence and exploitation, even in the absence of a formal report.

178. According to trial records in the murder proceedings, the first Applicant was presented as the wife of Osman Kamara, and that she was only fifteen years old at the

time. To put this in context, the Court will reproduce the untagged page of the criminal proceeding annexed next after the coroner's report, headed;

Evidence in chief of PW1 (sok)

"I am Oswan Kamara. I live in Mile 88 in the Tonkolil district, Yoni chieftown. I do farming in my village, and I am married to three wives, including the offender in this court. She is staying with me with her co–wives.

179. The untagged page of the criminal proceeding next to annexure 3 is also reproduced as follows;

"Name – Adamsay Kabia
Tribe - Temme
Address- No 111 Freetown road Mile 91 town
Occupation- house wife
Nationality- Sierra Leonean
Religion- Islam
Age – 15 years
Sex- Female
Phone no - Nil
Place of interview- Criminal Investigation Department office, Mile 91 police station, Mile 91 town.
Date and time of interview commenced- 3rd February 2021; 0855 hours
Date and time of interview concluded- 3rd February 2021; 0930 hours
Officer recording the interview- Detective Sergeant 8334 Sanfa A.D
Other officers present- Detective Sergeant 7231 Bam N.Y.
Signed 03/02/2021".

180. The Court notes that this case raises a fundamental question concerning the scope of the State's obligation to investigate human rights violations, particularly where the victim or accused is a child in a vulnerable marital setting, and the State, through its agents, possessed or ought to have possessed knowledge of such vulnerability.

181. The facts before the officers of the Respondent are that the 1st Applicant, a 15-year-old married girl, is charged with the murder of the son of her husband's other wife. It is undisputed that the Police, during the investigation, formally recorded her age as 15 years. That fact is central to the present inquiry.

182. By formally documenting the age of the 1st Applicant, the court finds that the Respondent had actual knowledge that: The 1st Applicant is a child within the meaning of applicable law. She is in a marital setting, which raises issues of: Child marriage, Possible coercion, Psychological and social vulnerability. Under these circumstances, the Respondent is therefore clothed with direct knowledge of the age situation of the first Applicant, triggering heightened protection obligations.

183. Despite this knowledge, there is no evidence before this Court that the Respondent, through its investigative authorities, conducted any child-sensitive inquiry, investigated the circumstances of the marriage, and examined possible abuse, coercion, or provocation.

184. Such omissions constitute a failure of due diligence, which the Court has affirmed in such circumstances is itself a violation of the State's obligations under the African Charter. *The State has the duty to protect all persons on its territory and to investigate and punish all acts of violence and violations committed on its territory ... The duty of due diligence in international law enjoins a State to take action to prevent human rights violations and to investigate, prosecute, and punish the perpetrators when they occur. The State's failure or omission to take preventive or protective action itself constitutes a violation of basic rights on the State's part, because the State controls the means to verify acts occurring within its territory. The State has an obligation to ensure that the victim has an effective remedy available for all victims of violations in the State"* OBIOMA C. O. OGUKWE v. REPUBLIC OF GHANA (2016) CCJELR 469, page 485 para. 8.3.

185. Following on this, the Court recalls that under international human rights law, the obligations of States are not limited to abstaining from violations, but extend to ensuring the effective protection of the rights guaranteed to individuals within their jurisdiction. In this respect, the court aligns with the *United Nations Human Rights Committee, in its General Comment No. 31,* where it affirmed that States Parties are under a duty to investigate alleged violations of Covenant rights promptly, thoroughly, and effectively through independent and impartial bodies, and to ensure that those responsible are brought to justice.

186. Furthermore, the Court equally aligns with the General Comment No. 3 on the Right to Life (Article 4 of the African Charter) of the African Commission on Human and People's Rights where it affirmed *"that State responsibility may arise not only for acts of its agents but also for acts of private individuals where such acts are not adequately prevented, investigated, or prosecuted, especially where* ***the authorities knew or ought to have known*** *of a real risk to life and failed to act with due diligence. ..." {Emphasis ours}*

187. In line with these convergent international and regional standards, the Court finds that the obligation to investigate constitutes a fundamental component of the due diligence required of States. Such an obligation is triggered whenever there is a credible allegation or reasonable suspicion of a violation, and it must be discharged through prompt, independent, and effective measures capable of leading to the identification and punishment of those responsible. A failure to discharge this duty may, in itself, constitute a distinct violation of the State's international responsibility and human rights obligations.

188. The Court finds that the Respondent's inaction in this case is incompatible with their obligations under the African Charter, the Maputo Protocol, and the ACRWC, which require State Parties to protect children from harmful social and cultural practices and to ensure access to effective remedies.

189. Accordingly, The Respondent being in actual knowledge of the age of the first Applicant, the Court holds that the Respondent's failure to investigate, prosecute, and punish the perpetrators responsible for her marriage constitutes a breach of its obligations to fulfil the human rights of the first Applicant, and is in violation of the ACRWC particularly Articles 1(1), 1(3), 21, and 27 and Article 25 the Maputo Protocol, and Article 1 of the ACHPR

iii. On Violation of the Right to Freedom from Gender-Based Discrimination.

Applicants' Submissions

190. The Applicants submit that the Respondent, by failing to prohibit and eliminate child marriage, has violated the right of girls, including the first Applicant, to freedom from gender-based discrimination and violence. They assert that this failure contravenes the Respondent's obligations as provided under the following human rights instruments: *Articles 2 and 18(3) of ACHPR: Articles 1(f), 1(j), 2, 3(4), and 4 of the (Maputo Protocol): Articles 1, 2, 16(1) (b), and 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).*

191. The Applicants argue that child marriage is a harmful traditional practice that disproportionately affects girls, infringes on their dignity and autonomy, and exposes them to physical, sexual, and psychological harm. This, the Applicants maintain, constitutes both gender-based violence and discrimination. Consequently, the Applicants submit that the Respondent's failure to prohibit child marriage under customary law and protect girls such as the first Applicant, Adamsay Kabia, constituted a violation of its international obligations to ensure gender equality and protect Adamsay Kabia from gender-based violence.

192. Additionally, they submit that international and regional instruments, particularly the Maputo Protocol and CEDAW, define gender-based violence as a form of

discrimination. These instruments, as clarified by General Recommendations Nos. 19 and 35 of the CEDAW Committee, call on States to repeal or reform laws that tolerate such practices and to take positive measures to eliminate them.

Respondent's Submissions

193. The Respondent denies that it has violated any international obligations. It submits that it has enacted significant legal and policy reforms aimed at eliminating gender-based violence and promoting gender equality, including: The Child Rights Act 2007; The Sexual Offences Act 2012 (as amended); The Domestic Violence Act; The Gender Equality and Women's Empowerment Policy; and The Prohibition of Child Marriage Act 2024.

194. The Respondent further submits that it has taken institutional measures to implement these laws and to sensitize the public about harmful traditional practices. They maintain that the specific claims of gender-based discrimination made by the Applicants are unsubstantiated and that no failure of protection occurred in the case of Adamsay Kabia, as her matter was addressed in accordance with due process.

Analysis of the Court.

195. The Court is called upon to determine whether the Respondent State, in the circumstances of this case, has violated the Applicant's right to freedom from gender-based discrimination, particularly in the context of its failure to effectively prevent child marriage. The Court, in addressing the alleged violation, must at the onset define the Gender-Based Violence (GBV), which is premised on freedom from discrimination. The 1993 UN Declaration on the Elimination of Violence against Women defines GBV as: *"Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering... whether occurring in public or private life."*

196. Furthermore, General Recommendation 35 (2017) of the CEDAW describes GBV as: *"Violence that is directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately."* In other words, GBV is any act of violence, abuse, or harmful conduct directed at a person because of their sex, gender, gender identity, or perceived gender roles, or that disproportionately affects persons of a particular gender. This can include physical, sexual, psychological, emotional, and economic abuse occurring in both public and private spheres.

197. In the context of this general definition, GBV in relation to women anticipates above referred act of violence that are targeted against women. To put it in the right perspective, the CEDAW Committee (General Recommendation No. 19) in its expanded definition clarifies GBV as a violence directed at a woman because she is a woman or disproportionately affects women and constitutes discrimination under international law.

198. In delineating the legal contours of gender-based discrimination, this Court has held that *"Gender-based discrimination must relate to one or more acts directed against the female gender, at least against a category of persons determined by their classification as belonging to the category of the feminine sex. In other words, the facts complained about must be clothed, to a certain extent, in the garb of a 'generality'; such facts must portray a systematic feature which enables one to affirm a deliberately discriminatory nature at stake".* WOMEN ADVOCATES RESEARCH AND DOCUMENTATION CENTER & ANOR (ON BEHALF OF MARY SUNDAY) vs THE FEDERAL REPUBLIC OF NIGERIA, Judgment No. ECW/CCJ/JUD/11/18, unreported @ pg. 5.

199. To this end, the Court reiterates its decision that *"A systematic operation directed against only the female gender furnished evidence of discrimination"*. See DOROTHY

CHIOMA NJEMANZE & 3 ORS vs FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO. ECW/CCJ/JUD/08/17 @ PAGE 40, UNREPORTED.

200. The court states that the right to freedom from discrimination is a foundational norm under regional and international human rights law, and GBV is universally prohibited as a discriminatory practice that disproportionately affects a protected group, in this case, young girls. The following instruments, which the Applicant has alluded to, are instructive.

201. *Articles 2 and 18(3) of ACHPR:* obliges States to ensure equal enjoyment of rights without discrimination based on sex (Article 2) and to eliminate all forms of discrimination against women while protecting the rights of women and children as prescribed by international treaties (Article 18(3).

202. *Articles 1(f), 1(j), 2, 3(4), and 4 of the (Maputo Protocol):* requires States to combat all forms of discrimination against women (Article 2) and to adopt legal and institutional safeguards against gender-based violence (Articles 3(4) and 4(2)). It defines both "discrimination" and "violence against women" to include any acts, omissions, or practices that cause physical, sexual, psychological, or economic harm, **including child marriage**, which inherently results in such harm and is predominantly suffered by girls. {Emphasis ours}

iv. *Articles 1, 2, 16(1) (b), and 16(2) of the (CEDAW).* Provides in Articles 1 and 2 that gender-based violence constitutes a form of discrimination.

203. In this regard, under Articles 2 and 18(3) of the African Charter, States must guarantee equal enjoyment of all rights and eliminate all forms of discrimination against women and girls. Similarly, Articles 2, 3(4), and 4 of the Maputo Protocol and Articles 1 and 2 of CEDAW impose obligations to combat gender-based violence and discriminatory practices, including child marriage.

204. In this context, the Court has held that: *"The obligation regarding the protection of the family, notably women and children, within the meaning of Article 18 of the African Charter on Human and Peoples' Rights, makes it binding on the State to ensure, in concrete terms, that the female gender of human beings is accorded humane treatment, by reason of their vulnerability".* See AMINATA DIANTOU DIANE (Supra),

205. In the instant matter, the case of the Applicant is that the Respondent, by failing to prohibit and eliminate child marriage, has violated the right of girls, including the first Applicant, to freedom from gender-based discrimination and violence. The Respondent denies this allegation and maintains that there exist numerous laws that prohibit child marriage, consequent of which no violation can be imputed on them.

206. The Court affirms that child marriage is widely recognized as a practice that intrinsically and disproportionately affects girls. By its nature and impact, it constitutes a manifestation of gender inequality and structural discrimination. This finds support from the *Committee's General Recommendations No. 19 and No. 35, of CEDAW,* which explicitly identify forced and child marriage as a manifestation of gender-based violence and a violation of women's and girls' human rights.

208. While the Applicants maintain that the Respondent, in failing to prohibit child marriage, is in violation of the freedom of the First Applicant and other similar girls from GVB, the Respondent denies and insists that there exist numerous laws that prohibit child marriage, consequent of which no violations can be imputed on them.

209. Despite this affirmation of compliance by the Respondent, reports by International Organizations on the ground to which the Respondent has not denied state that *"Early and forced marriage and female genital mutilation (FGM) were still prevalent. According to a Save the Children Report published in March, Sierra Leone had the 18th highest child marriage rate in the world."* See The *Amnesty International Report*

2021/22 On the State of the World's Human Rights, on page 325, featuring Women's and Girls' Rights in Sierra Leone.

210. The Court reiterates that child marriage is not a neutral practice. It is inherently discriminatory; it disproportionately affects girls, undermines girls' access to education, health, and economic opportunities, and exposes them to increased risk of domestic violence and maternal mortality. Consequently, it engages Articles 2 and 3 of the ACHPR; it perpetuates structural inequality contrary to CEDAW obligations; it constitutes a harmful cultural practice explicitly prohibited under Article 21 of the ACRWC and Article 5 of the Maputo Protocol (elimination of harmful practices). Thus, any failure by the State to prevent child marriage engages its responsibility for gender-based discrimination. These instruments call on States to repeal or reform all laws that tolerate such practices.

211. In supporting its compliance with the obligation to prohibit child marriage, as earlier recalled by the Court, the Respondent relied solely on the annexation of legislative enactments, without demonstrating their implementation, enforcement, or effectiveness. Under Article 18(3) of the ACHPR, Article 2 of CEDAW, and Article 6(b) of the Maputo Protocol, the Respondent is required to take proactive and effective measures. The mere allegation of the existence of laws, as previously held, does not satisfy this obligation.

212. The Respondent has not shown evidence of the enforcement of child marriage prohibitions, judicial or administrative remedies provided to victims, or preventive or protective mechanisms in practice. This omission allows a practice that disproportionately harms girls to persist and denies them equal protection of the law and equal enjoyment of rights.

213. The Respondent's reliance on the mere annexation of legislation, without proof of enforcement or effectiveness, does not satisfy its obligations under the

aforementioned instruments. On the contrary, it reveals a failure to protect girls from a practice that is intrinsically discriminatory. In light of the foregoing, the Court finds that the Respondent, by failing to adopt and effectively implement concrete measures to prevent child marriage, has violated the Applicant's right to freedom from gender-based discrimination

214. The Court therefore holds that the Respondent's conduct sustains a system in which girls are disproportionately exposed to child marriage, and the failure to act transforms legislative insufficiency into systemic gender-based discrimination. This constitutes a violation of Articles 2, 3, and 18(3) of the ACHPR; Articles 2 and 16 of CEDAW; Article 21 of the ACRWC; Articles 5 and 6 of the Maputo Protocol; and Articles 2 and 19 of the CRC.

XII. REPARATIONS AND REMEDIES

215. The Court recalls that under Article 10(d) of the 2025 Supplementary Act (Act SA.1/12/25), on the ECOWAS Court of Justice, it is empowered to grant relief to remedy human rights violations. In accordance with this Court's established jurisprudence and international human rights standards, *"It is a general principle of law that any violation of an international obligation that has produced damage entails the obligation to make reparations"*. See HEMBADOON CHIA & 7 ORS. v. FEDERAL REPUBLIC OF NIGERIA & ANOR. ECW/CCJ/JUD/21/18 @ pg. 33: Such reparations may include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

216. Having found that the Respondent has failed in its obligations to prevent child marriage of the 1st Applicant's and also failed to investigate the perpetrators of the marriage of the 1st Applicant, as well as the violation of the right to freedom from gender-based discrimination of the 1st Applicant, the Court proceeds to determine the appropriate remedies.

217. The Court recalls that remedies in human rights adjudication must be effective and capable of providing meaningful redress for the violations established. Such remedies should not only compensate the victim for the harm suffered but, where appropriate, also address the underlying structural deficiencies that gave rise to the violation, thereby ensuring the effective protection of the rights guaranteed under the applicable human rights instruments. See HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER, *ECW/CCJ/JUD/06/08;* CHIEF EBRIMAH MANNEH V. REPUBLIC OF THE GAMBIA, *ECW/CCJ/JUD/03/08;* DOROTHY CHIOMA NJEMANZE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA, *ECW/CCJ/JUD/08/17; AND* SERAP V. FEDERAL REPUBLIC OF NIGERIA & UNIVERSAL BASIC EDUCATION COMMISSION, *ECW/CCJ/JUD/07/10.*

218. In that regard, the Court aligns with the African Commission to state that *"reparations are aimed at addressing both individual and collective harm and preventing recurrence"*. The African Court in *African Commission on Human and Peoples' Rights v. Kenya (Ogiek Case), Application No. 006/2012 (Judgment of 23 June 2022 on Reparations).*

Compensation

219. With regards to the 1st Applicant, the Court considers that the harm suffered by her includes physical, psychological, and emotional trauma, loss of dignity, and prolonged denial of her fundamental rights. This harm merits reparation following its established jurisprudence that where an *"Applicant suffered undoubted moral harm, it shall be appropriate to award him damages in reparation thereof"*. See SOW BERTIN AGBA v. REPUBLIC OF TOGO, CCJLR 121, para. 41, p. 133

220. In that regard, the Court holds that the Applicant is entitled to adequate reparation for the harm suffered as a consequence of the Respondent's failure to act with due diligence to prevent her marriage as a child and the associated GBV. Accordingly, the

Court orders that the Respondent shall pay monetary compensation to the Applicant in the sum of the equivalent of 10,000 dollars of the Respondent's national currency for the material and moral damages suffered as a result of: exposure to child marriage; violation of the right to equality and non-discrimination; and associated harm, loss of dignity, and personal development.

Investigation of the child marriage

221. The Court recalls its finding that the Respondent's failure to investigate, prosecute, and punish the perpetrators of the first Applicant's abuse constitutes a breach of its obligations to protect the human rights of the first Applicant, in violation of the ACRWC, the Maputo Protocol, and the ACHPR. Consequently, the Court orders the Respondent to investigate, where appropriate, to prosecute and punish the perpetrators of those implicated in the marriage of the 1st Applicant.

Legislative and Institutional Reform

222. The Court found that the Respondent failed to demonstrate to the satisfaction of the Court, that it has adopted the necessary legislative measures to give effect to its international human rights obligations by enacting laws prohibiting child marriage and establishing eighteen (18) years as the minimum age for marriage. Noting further that this not merely individual but systemic failure to implement legal framework for the implementation of such obligation, accordingly, the Respondent is ordered to review and strengthen its legislative framework to ensure:

- Explicit prohibition of child marriage in line with Article 6(b) of the Maputo Protocol and other relevant international instruments to which it is a signatory;
- Harmonize all domestic laws to set the minimum age of marriage at 18 years without exception;
- Elimination of legal loopholes permitting customary or religious practices that undermine statutory protections.

Guarantees of non-repetition

223. In view of the systemic and continuous violation of child marriage and the attendant GBV, the Court further orders that the Respondent take structural measures to prevent recurrence of such violations, including:

- Sustained public awareness campaigns on the harmful effects of child marriage;
- Strengthening institutional accountability mechanisms to ensure oversight and enforcement.

Psychological or psychiatric support

224. In light of the nature of the harm suffered, with the attendant moral and psychological trauma, the Court considers it appropriate to order the Respondent to provide to the 1ST Applicant free adequate, and effective psychological or psychiatric support, through specialized public health institutions, to continue as long as the health of the victim requires.

XIII. COSTS

225. The Court notes that the Applicants were compelled to bring this action to vindicate their rights. In accordance with Article 66(2) of the Rules of Procedure of the Court, which states that *"the unsuccessful party shall be ordered to pay the costs if they have been applied for"*, the Respondent is ordered to pay the Applicants' legal costs, to be assessed by the Chief Registrar.

XIV. OPERATIVE PART

226. The Court, for the reasons set out above, composed in accordance with Article 15 of the Supplementary Protocol (A/SP.1/01/05), and after deliberation, hereby:

a. **Declares** that it has jurisdiction to hear the matter.

b. **Declares** that the application is admissible.

c. **Declares** that the Respondent State, the Republic of Sierra Leone, has violated the following rights of the first Applicant, Adamsay Kabia:

- The right to protection against child marriage under Article 21 of the African Charter on the Rights and Welfare of the Child (ACRWC);
- The right to freedom from gender-based discrimination and violence under Articles 2 and 18(3) of the African Charter on Human and Peoples' Rights (ACHPR); Articles 1(f), 1(j), 2, 3(4), and 4 of the Maputo Protocol; and Articles 1, 2, 16(1)(b), and 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- The right to an effective remedy and the obligation to investigate under Articles 1, 21, and 27 of the ACRWC; Article 25 of the Maputo Protocol; and Article 18(3) of the ACHPR;

d) **Orders** the Respondent State to pay the sum of equivalent of 10,000 US dollars in the national currency as compensation for the material and moral damages suffered as a result of: exposure to child marriage; violation of the freedom from GBV and associated harm, loss of dignity, and personal development.

e) orders the Respondent to investigate, where appropriate, to prosecute and punish the perpetrators of those implicated in the marriage of the 1st Applicant.

f) **Orders** the Respondent State to provide the first Applicant with Free psychological counseling and rehabilitation services.

g) **Orders** the Respondent State to undertake legislative and institutional, and legal reforms to review and strengthen its legislative framework to ensure:

- Explicit prohibition of child marriage in line with Article 6(b) of the Maputo Protocol;

- Harmonize all domestic laws to set the minimum age of marriage at 18 years without exception;
- Elimination of legal loopholes permitting customary or religious practices that undermine statutory protections.

h) Orders that the Respondent to take structural measures to prevent recurrence of such violations, including:

- Sustained public awareness campaigns on the harmful effects of child marriage;
- Strengthening institutional accountability mechanisms to ensure oversight and enforcement.

i) **Orders** the Respondent State to submit to the Court, within six (6) months from the date of notification of this judgment, a report on the measures taken to implement this decision.

j) **Orders** the Respondent State to bear the costs of the proceedings.

Hon. Justice Ricardo Claudio Monteiro GONÇALVES -Presiding.....

Hon. Justice Dupe ATOKI -Member/Judge Rapporteur.....

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

Dr. Yaouza OURO-SAMA- Chief Registrar.....

Done in Abuja, this 25th day of June 2026 in English language and translated into French and Portuguese.