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

In the Matter of

LA LIGUE SENEGALAISE DES DROITS HUMAINES & AMNESTY INTERNATIONAL SENEGAL SECTION V REPUBLIC OF SENEGAL

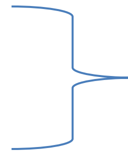
Application No: ECW/CCJ/APP/37/20 Judgment No: ECW/CCJ/JUD/22/22

JUDGMENT

ABUJA

31 March 2022

LA LIGUE SENEGALAISE
DES DROITS HUMAINS & AMNESTY
INTERNATIONAL SENEGAL SECTION



APPLICANTS

V.

REPUBLIC OF SENEGAL - RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE - Presiding
Hon. Justice Ouattara GBERI-BÈ - Member
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur

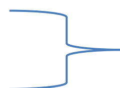
ASSISTED BY:

Dr Athanase ATTANON - Deputy Chief Registrar

REPRESENTATION OF PARTIES:

Mr. Assane Dioma NDIAYE - Counsel for Applicant

Moussa Sow Papa Felix, Esq.
Mr. Samba Biteye



Counsel for the Respondent

I. JUDGMENT

1. This is the 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 is the *Senegalese League of Human Rights* an association registered in Senegal in accordance with the laws of the Republic of Senegal. The Second Applicant is *Amnesty International Section Senegal,* a non-governmental organisation acting through its legal representative resident in Senegal. They filed the Application on their behalf and that of the Senegalese people. The first and second Applicants shall hereinafter be referred to as “Applicants”.

3. The Respondent is the Republic of Senegal, a Member State of the Economic Community of West African States (ECOWAS), signatory to the ECOWAS Treaty and to the African Charter on Human and Peoples’ Rights and other international human rights instruments (hereinafter referred to as the “Respondent”).

III. INTRODUCTION

4. This Application is premised on the Applicants’ allegation that Order No 007580/MINT/SP of 20 July 2011, which banned all demonstrations in the area between El Hadji Malik SY Avenue and Cape Manuel as well as the vicinity of the Renaissance Monument and in front of hospitals in Senegal, is in violation of their rights and those of the Senegalese people being in

contravention of the Constitution of Senegal and other International treaties ratified by the Respondent.

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed by the Applicants on 14 September 2020 and served on the Respondent on 28 September 2020.

6. The Respondent's Defence and Preliminary Objection were filed on 22 October 2020 and were both served on the Applicant on the same day, that is, 22 October 2022.

7. The Applicants filed a reply to the Respondent's defence on 15 December 2020 and same was served on the Respondent on 17 December 2020.

8. During the Court's hearing on 23 September 2021, both parties were represented by Counsel in Court. The Respondent's Counsel presented their objection to the admissibility of the case, while the Applicant opposed the Preliminary Objection of the Respondent. The Court ruled that the Application is admissible and dismissed the objection by the Respondent. The Court further reserved its reasoning on the Ruling on the Preliminary Objection to the final judgment.

9. The Court then heard the Application on the merits. The Applicants presented their case on the merit and the Respondent also presented their defense on the merit. The Court afterwards directed the Respondent to transmit the contested Order dated 20 July 2011 to the Court and adjourned the Application for judgment.

V. APPLICANT'S CASE

a) Summary of facts

10. The Applicants allege that on 20 July 2011 the then Minister of Interior of Senegal issued Order No 007580/MINT/SP of 20 July 2011 which banned all political demonstrations in the area between El Hadji Malik Sy Avenue and Cape Manuel as well as the vicinity of the Renaissance Monument, courts and tribunals, the Senate, in front of hospitals and other designated areas of Dakar the Respondent's capital.

11. The Applicants further alleged that they wrote a letter on 23 February 2018 to the Minister of Interior requesting a repeal of the Order on the ground that it is in violation of the rights of citizens of Senegal. However, despite acknowledging the letter and promising to consider the request, the Minister did not respond further or take any action to grant the request.

12. That four months after the letter was written, the Applicants concluded that the request was implicitly rejected by the Minister. Thus, they approached the Administrative Chamber of the Supreme Court of the Respondent seeking annulment of the Order.

13. That by a decision of 29 August 2019, the Supreme Court declared the Applicants' appeal inadmissible for failing to comply with the legal time limit for lodging an appeal for such annulment. In doing this, the Supreme Court took into account the date of entry into force of the contested Order, which is 20 July 2011.

14. The Applicants aver that the Order is still in force and all requests for demonstrations and peaceful protests in the said areas have been denied. They claim this is in violation of the rights to freedom of assembly, freedom of expression and freedom of movement of the Applicants and Senegalese people guaranteed in Articles 11, 9(2) and 12 (1) of the African Charter on Human and Peoples' Rights (African Charter) respectively, and other relevant provisions of international human rights treaties.

15. The Applicants therefore filed this Application before the Court for relief for the violation of their rights and of those Senegalese citizens by the Respondent in this regards.

a) Pleas in law

16. The Applicants rely on the following laws:

i. Order No 007580/MINT/SP of 20 July 2011;

ii. Articles 9(4) and 10(d) of the Supplementary Protocol of 2005;

iii. Articles 8 and 10 of the Constitution of the Republic of Senegal;

iv. Articles 9, 11 and 12 of the African Charter;

v. Articles 12, 18(3), 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR);

vi. Articles 13, 19 and 20(1) of the Universal Declaration of Human Rights (UDHR).

b) Reliefs sought

17. The Applicants pray the Court to grant the following reliefs:

i. Find the violation by the Republic of Senegal of the freedom of assembly and demonstration guaranteed by the provisions of Articles 8

and 10 of the Constitution of the Republic of Senegal, Articles 8 and 11 of the African Charter on Human Rights and Peoples, Articles 18(3) and 21 of the International Covenant on Civil and Political Rights as well as Article 20(1) of the Universal Declaration of Human Rights;

ii. Find the violation by the Republic of Senegal of the freedom of expression guaranteed by the Constitution of Senegal in its Articles 8 and 10 but also by the provisions of Article 9(2) of the African Charter on Human and Peoples' Rights, Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and Political Rights;

iii. Find the violation by the Republic of Senegal of the freedom of movement guaranteed by Article 8 of the Constitution of Senegal but also by the provisions of Article 12(1) of the African Charter on Human and Peoples' Rights, Article 13(1) of the Universal Declaration of Human Rights and Article 12(1) of the International Covenant on Civil and Political Rights;

iv. Consequently, order the Republic of Senegal to pay the sum of 500,000,000 CFA francs in compensation to Amnesty International Senegal Section and to the Senegalese League of Human Rights;

v. Also order the Republic of Senegal to bear the entire costs.

VI. RESPONDENT'S CASE

Summary of facts

18. The Respondent raised a Preliminary Objection challenging the competence of the Court and of the Applicants, urging the Court to declare the Application inadmissible. The Court will address this objection under the Admissibility head.

19. In their defence, the Respondent state that though the Constitution of the Republic of Senegal provides for freedom of demonstration in Article 8, such freedom is exercised under conditions laid down by law. That the previously laid down law which is still in force is law No 78-02 of 29 January 1978 that regulates public gatherings.

20. That the year 2011, prior to the 2012 presidential elections, was marked by violent demonstrations that resulted in the loss of lives and looting at the city center. These events combined with terrorist threats required the Respondent to put in place security measures to protect the public and the city center where sensitive buildings are concentrated (Sandaga market, headquarters of institutions of the Respondent, national hospitals, port of Dakar, BCEAO headquarters etc.).

21. That it is in this context that the then Minister of Interior issued Order No 007580/MINT/SP of 20 July 2011, prohibiting demonstrations in the area between Avenue EL Hadji Malick SY and Cap Manuel and prescribed a perimeter of protection. That subsequently, taking into account the excesses observed during the demonstrations, and danger posed by

terrorism, the Minister of Interior issued Order No 20.07.2011.007580, prescribing perimeter protection.

22. They cite the relevant portion of the Order to support this claim.
Article 1 of the said Order provides that
"For security reasons, demonstrations of a political nature are prohibited in the area between El Hadj Malick Sy Avenue and Cape Manuel, particularly in front of the buildings housing the National Assembly, Senate, Economic and Social Council, Courts and Tribunals, Palais de la République, Administrative Building and Independence Square.
"The same ban applies in the immediate vicinity of the African Renaissance Monument and in front of hospitals.
However, processions of a traditional, religious or sporting nature are free subject to the fulfilment of the formality of the prior declaration to the administrative authority."

23. The Respondent argues that it is up to the executive to determine the perimeters of protection according to the threat to public order posed in accordance with the law. That the second Applicants challenged the said Order before the Supreme Court, which issued a decision on 29 August, 2019 declaring the said appeal inadmissible for failure to comply with the deadline for appealing an administrative decision.

24. The Respondent denies violating the provisions of the African Charter and international human rights treaties because they subject the principle of freedom of demonstration/assembly to law and regulation. They argue that the Applicants merely mentioned international provisions without referring

to the corresponding restrictions. For example, the ICCPR provides restrictions to principles of freedom of expression and freedom of assembly, subjecting them to the dictates of the law.

25. The Respondent further argues that the Applicants have not adduced evidence to show that their rights were violated as alleged and have also not justified their claim by showing that they were directly affected as victims for the violation of their rights as alleged.

26. That in view of the foregoing, the Respondent prays the Court to dismiss the Applicant's Application.

a) Pleas in law

27. The Respondent relies on the following laws:

i. Article 8 of the Constitution of the Republic of Senegal;

ii. Law No 78-02 of 29 January 1978;

iii. Article 107 of the Constitution of the Republic of Senegal;

iv. Article 1 of Order No 007580/MINT/SP of 20 July 2011;

v. Articles 12(3), 19(3) and 21 of the ICCPR;

vi. Articles 11 and 12(2) of the African Charter.

c) Reliefs sought

28. The Respondent seeks the following reliefs from the Court;

i. Grant the Preliminary Objections raised on jurisdiction and admissibility;

ii. Reject the Application as ill founded;

iii. Order the Applicants to bear the costs.

VII. JURISDICTION

29. This Application is founded on the alleged violation of the right to freedom of assembly, freedom of expression and freedom of movement guaranteed in Articles 11, 9 and 12 (1) of the African Charter respectively. In accordance with Article 9(4) of the Protocol A/P1/7/91 on the Community Court of Justice (Protocol), which provides, *"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State."* The Court therefore holds that the Application being premised on the alleged violation of human rights, the Court has jurisdiction to adjudicate on the Application.

30. ***VIII. ADMISSIBILITY***

The admissibility of applications in this Court is provided for in Article 10(d) (i) and (ii) of the Supplementary Protocol 2005: *"Access to the Court is open to…d) individuals on application for relief for violation of their human rights; the submission of application for which shall: i) not be anonymous; nor ii) be made whilst the same matter has been instituted before another International Court for adjudication.*"

31. The Court holds that the Application is in compliance with Article 10 (d) (i) and (ii) of the Protocol, having found that it is neither anonymous nor made whilst the same matter has been instituted before another international court for adjudication.

32. It is imperative to state at this point that while Article 10(d) (i) and (ii) are statutory provisions enshrined in the Protocol for the determination of the admissibility of an application therein, they are not exhaustive as certain

facts of the application may present a need for further examination of its admissibility outside the enshrined provision.

33. The Respondent raised a Preliminary Objection on the admissibility of the Application based on four prongs;
    a) Irregularity as to the form of the Application;
    b) Incompetence of the Court to review a national law;
    c) Lack of capacity of the Applicants being legal persons;
    d) Lack of locus standi of Applicants not being victims.

34. Thus while the Application has been declared to be in compliance with the provision of Article 10(d) (i) and (ii) of the Supplementary Protocol, it is imperative to examine the preliminary objections raised which are listed above.

35. Issues raised as a Preliminary Objection are such that can be adequately disposed of based on the claims and reliefs sought in the application. Issues of locus standi require the examination of all proof and evidence placed before it to determine their probative value. The Court will proceed to examine Preliminary Objections (a-c) while the last (d) objection relating to the locus standi of the Applicants being a matter of evidentiary proof will be addressed on merit.

36. The Court sitting on 23rd September 2021 heard the parties on the preliminary objections of the Respondent and ruled dismissing same while deferring the reasoning to be imputed in the final judgment. The Court will now proceed to give its reasons as ruled.

a) Irregularity as to the form of the Application non- provision of address at the seat of the Court

37. It is the contention of the Respondent that the Application did not include an address of the Applicants at the seat of the Court contrary to the conditions laid down in Article 33 of the Rules of Court. They state that according to the said Article, the Chief Registrar must set a deadline for the Applicants to regularise their Application, otherwise their application will be declared inadmissible.

38. The Respondent concludes that in the absence of regularization of their Application within the required time limit, it should be declared inadmissible for failure to observe the formal conditions laid down by Article 33 of the Rules of Court.

39. The Applicants in their response to the Respondent's objection as to form stated that the Application fulfilled its purpose given that the Respondent received same and filed a statement of defense within the time limit. That their objection in this regard is therefore not justified.

*****

40. The Court notes that the Preliminary Objection of the Respondent hinges on Article 33 of the Rules of Court. However, only sub-sections (1), (2), and (6) of the said Article is relevant. The said sub-Articles are reproduced as follows:

    1. *"An application of the kind referred to in Article 11 of the Protocol shall state:*

    (a-e)...

2. For the purpose of the proceedings, the application shall state an address for service in the place where the Court has its seat and the name of the person who is authorised and has expressed willingness to accept service.

6. If the application does not comply with the requirements set out in paragraphs 1-4 of this Article, the Chief Registrar shall prescribe a period not more than thirty days within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the above-mentioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court shall, after hearing the Judge Rapporteur, decide whether the non- compliance with these conditions renders the application formally inadmissible."

41. The Court notes that the Registry of the Court is entrusted with the responsibility of ensuring that pleadings filed are in accordance with the Rules of Court. As such, issues of lapses like in cases of failure to provide an address, ought to be pointed out by Registry to the applicant, to enable them put their house in order.

42. Though the Registry accepted their failure to notify the Applicants of any lapse, however, the omission being a procedural lapse which does not go to the substance of the case, the admissibility of the Application will not be vitiated. See *CHEIKH GUEYE V REPUBLIC OF SENEGAL ECW/CCJ/JUD/21/20 PAGE 14.* See also *DAOUDA GARBA V. REPUBLIC OF BENIN, JUDGMENT NO. ECW/CCJ/JUD/01/10, (2010) CCJELR PARAGRAPH 30.* Where the Court held that *"...mere absence of the citation of the*

Applicant's address on his application cannot constitute an obstacle to the admissibility of the application…"

43. The Court therefore dismisses the Respondent's objection and holds that the Application is admissible.

b) Incompetence of the Court to review a national law

44. The Respondent raised a Preliminary Objection challenging the competence of the Court to examine Order N° 7580 / MINSTSP of 20 July 2011 being a legislation of a State. This objection will be addressed at this stage as it does not require the examination of the impugned Order as to its compliance with international standards which is a merit consideration.

45. The Applicants in their response contend that the Respondent has the obligation to repeal Order No 7580/MINSTSP of 20 July, which is a manifestly illegal administrative Act which furthermore violates the fundamental rights of the Senegalese people since any request for meeting is systematically denied. They argue that the Application is well founded and urges that the Court of Justice find that the Republic of Senegal retains in its legal order an administrative Act which infringes on the rights and freedoms guaranteed by national and international texts.

*****

46. States, by virtue of their sovereign nature are independent of any interference which impugns actions or decisions taken in that capacity. This informed the position taken by the Court in a plethora of cases that

it will not examine any legislative or judicial decision taken by Member State. Indeed as concerns judicial decisions the Court will not constitute itself into an appellate court to sit over judgments of National Courts.

47. While this is a general principle, it is however not of general application, as such national actions and or decisions are subject to compliance with international human rights standards. In this wise, the Court has reiterated in several decisions that it will assume jurisdiction and examine either legislative or judicial decisions when violation of human rights have been alleged therein. Reiterating the above, the Court held that, *"it is not an appellate court and will only admit cases from national courts where human rights violations were alleged in the course of the proceedings.* See *JUSTICE PAUL UUTER DERRY & 2 ORS V. THE REPUBLIC OF GHANA UNREPORTED ECW/CCJ/JUD/17/19 PAGE. 28.*

48. This issue was finally put to rest when the Court held that; *"... It has severally drawn a distinction between its lack of jurisdiction to examine the decisions of national courts and its jurisdiction to hear cases of human rights abuses arising therefrom. The Court has consistently held that it cannot sit on appeal over decisions of national Courts of Member States."*

See *FINANCE INVESTMENT & DEVELOPMENT CORPORATION (FIDC) V. REPUBLIC OF LIBERIA UNREPORTED ECW/CCJ/JUD/23/18 PAGE. 11.* See also *HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER ECW/CCJ/JUD/06/08 PAGE 13; NNENNA OBI V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO. ECW/CCJ/APP/JUD/27/16 PAGE 13-14; MESSRS ABDOULAYE BALDE & ORS V REP OF SENEGAL ECW/CCJ/JUD/04/13 PAGE 22.*

49. In light of the this, the Court holds that it has the power to examine Order N° 7580 / MINSTSP of 20 July 2011 to determine their compliance or otherwise with the African Charter and other International Human Rights instruments to which the Respondent is signatory. The Preliminary objection of the Respondent in this wise is hereby dismissed.

c) Lack of capacity of the Applicants being legal persons

50. The Respondent argued that in order to bring an action in accordance with Article 10 (d) of the Protocol "*it is necessary to be a natural or legal person who must also justify, assuming that he is endowed with legal capacity with regard to his national legislation his status of victim" See Doc. 3 page 6.*

51. In their response to the Respondent's objection under this head, the Applicants argued that their status as legal persons does not render the Application inadmissible since the Court allows legal persons to bring actions before it for human rights violations, as decided in *SERAP V FEDERAL REPUBLIC OF NIGERIA AND OTHERS, ECW/CCJ/APP/07/10.*

52. That according to the said judgment, the Court confirmed that Non-Governmental Organisations (NGOs) duly constituted in accordance with their national laws can bring actions in respect of human rights violation where the victim is not an individual but a large group of individuals or even an entire community.

53. The Applicants therefore urge that the Application should be declared admissible having met the requirements of the law.

******

54. The general provision relating to admissibility of applications before this Court is governed by Article 10 (d) (i) and (ii) of the Protocol (as amended by the Supplementary Protocol 2005), which provides thus: "*Access to the Court is open to…d) individuals on application for relief for violation of their human rights; the submission of application for which shall: i) not be anonymous; nor ii) be made whilst the same matter has been instituted before another International Court for adjudication."*

55. The examination of the capacity of the Applicants as legal persons to institute this action is more compelling particularly in light of the fact that the Applicants are described in the Application as such and known as *La Ligue Senegalaise Des Droits Humains (Senegalese League of Human Rights) and Amnesty International Section Senegal.*

56. This is in conformity with the jurisprudence of the Court where it held as it concerns capacity of applicants that *"It is trite learning that where the capacity of a Plaintiff is put in issue, he must, if he is to succeed, first establish his capacity by the clearest evidence." EBERE ANTHONIA AMADI & 3 ORS V. THE FEDERAL GOVERNMENT OF NIGERIA JUDGMENT NO ECW/CCJ/JUD/22/19 PAGE 13*

57. The crux of the objection of the Respondent is not that the Applicants as legal persons lack the capacity to bring this action on their behalf or on behalf of the Senegalese people. Their argument is that the Applicants must establish their locus standi either in a representative capacity or otherwise by proving a damage suffered in that wise. In other words that the Senegalese or the Applicants must establish that they are victims by

reason of the harm or damages suffered arising from the ban on demonstration imposed by the contested Order N° 7580 / MINSTSP of 20 July 2011. The Court already deferred the examination of locus standi to the merit stage and maintain its stand.

58. The Court will however examine the Respondent's objection under two headings: c*apacity as legal person to maintain an action on their own behalf for violation of their human rights, and capacity to maintain an action on behalf of the Senegalese people for violation of their human righ*ts.

a) Capacity as legal person to maintain an action on their own behalf for violation of their human rights.

59. An examination of the capacity of legal persons to bring an action for the violation of their human rights calls for further elaboration beyond the consensus of parties. It is undisputed that both Parties are *ad idem* that a legal person can bring an action for themselves or in a representative capacity for a group for the violation of human rights. This is a well-founded principle which has been supported by a plethora of decisions by the Court. *"Non-governmental organisations (NGOs) and public spirited individuals can institute actions on behalf of a group of victims usually from a community or class of people based on common public interest to claim the violation of their human rights..."* See *THE REGISTERED TRUSTEES OF JAMA'A FOUNDATION & 5 ORS V FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/04/20, PAGE 14-15. See also NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 PAGE 19.*

60. The Court will not belabor this agreed point save to reiterate that while legal persons can sue for the violation of their human rights, limitations are imposed on the category of human rights in respect of which such legal persons can bring an action. In addressing this limitation the Court held, *"The established exceptions under which corporate bodies can ground an action are rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression."* *DEXTER OIL LIMITED V REPUBLIC OF LIBERIA (ECW/CCJ/JUD/03/19), PAGE 21.*

61. It is established from the pleadings before the Court that the Applicants are legal persons as they are described as *La Ligue Senegalaise Des Droits Humains (Senegalese League of Human Rights),* an association registered under Senegalese law, and *Amnesty International Section Senegal,* a non-governmental organization also resident in Senegal. Nevertheless, for their Application to be admitted, the Applicants must establish that they fall within the recognised exceptions to cloth them with capacity to bring this action.

62. The Applicants' allegation is premised on the violation of their right to assembly, free movement and freedom of expression all contrary to Articles 11, 12 and 9 of the Charter respectively. From the established exceptions earlier provided, it is obvious that the only action that the Applicants can maintain for themselves is the right of freedom of expression.

63. This reasoning is confirmed by the Court when it held that it has "*made it abundantly clear that non- natural persons can enjoy freedom of*

expression including other rights that are not dependent on human rights (i.e. derivative) and can initiate an action to protect those rights if they are violated." *AMNESTY INTERNATIONAL TOGO & 7 ORS V. THE TOGOLESE REPUBLIC ECW/CCJ/JUD/09/20 PAGE. 10.*

64. The Court therefore holds that the Applicants are devoid of capacity as a legal persons to bring an action for the violation of their right to assembly and free movement and the Application in that wise is hereby declared inadmissible. The allegation as it relates to violation of freedom of expression of the Applicants will be analysed at the merit stage.

b) Capacity to maintain an action on behalf of the Senegalese people

65. As it relates to the Applicants' representative action on behalf of the Senegalese for the violation of their rights to assembly, free movement and freedom of expression, the Court has recognised the capacity of NGOs to bring an action on behalf of a group or community in the interest of the public, challenging the law or action acknowledging that *"The doctrine of actio popularis was developed under the Roman law in order to allow any citizen to challenge a breach of a public right in court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in court. In public interest litigation the Plaintiff need not show that he has suffered any personal injury or has a personal interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has allegedly been breached and that the matter in question is justiciable."* See *SERAP V. FEDERAL REPUBLIC OF NIGERIA (2010) CCJELR, PAGE 196, PARAGRAPH 32 & 34.* See also *THE REGISTERED TRUSTEES OF*

JAMA'A FOUNDATION & 5 ORS V. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/04/20, PAGE 14-16.

66. The Court is of the considered opinion that any law which affects not only the rights of the Senegalese people to freedom of expression including right to demonstrate on political matters but also their rights to assemble freely and to free movement is clearly an issue of public interest.

67. Therefore, the Court holds that the Applicants being NGOs and suing on behalf of the Senegalese people for the violation of their rights to assembly, movement and freedom of expression have the competence to maintain this action. The Application in this wise is hereby declared admissible.

MERITS

68. Having held that the Application is admissible as it relates to the Applicants' personal action for the alleged violation of their right to freedom of expression as well as the representative action on behalf of the Senegalese people as it concern the alleged violations of their right to assembly, freedom of movement and freedom of expression, the Court must now examine whether these allegations have been proved. In other words whether the Applicants have established that they have locus standi as victims who suffered damages from the ban imposed on political demonstration by Order N° 7580 / MINSTSP of 20 July 2011.

Allegation of the violation of freedom of expression of the Applicants.

69. The Applicants allege that on 20 July 2011 the then Minister of Interior of Senegal issued an Order banning all political demonstrations in the area between El Hadji Malik Sy Avenue and Cape Manuel as well as the

vicinity of the Renaissance Monument, courts and tribunals, the Senate, in front of hospitals and other designated areas of Dakar the Respondent's capital.

70. The Applicants assert in their submission that freedom of expression includes freedom to disseminate one's opinion regardless of the means of expression. That carrying out a demonstration is a means of such expression which is protected by law because it is a means of expressing one's opinions.

71. They state that they do not have the possibility of fully expressing their opinions because of the prohibition imposed by the Ministerial Order of 20 July 2011.

72. On its part the Respondent contend that the freedom of expression is not absolute as it is restricted in accordance with the law, "*a) for respect of the rights or reputations of others; b) For the protection of national security or of public order, or of public health or morals.*" That the restrictions were made in the interest of national security, public safety, public order, health and freedoms of others.

73. They further argue that for the Applicants to succeed in their claim, they must prove their interests as victims by demonstrating that they have suffered a violation of the alleged human rights or to establish their status enabling them to bring an action on behalf of the victims. That the Applicants who allege to be victims have not demonstrated how their rights were violated or the injury they have suffered as a result of the restrictions of the Order.

74. The Respondent also contend that indeed the only restrictions imposed by the said Order relate to political demonstrations while all others like cultural, sporting or religious events are unaffected. They also argue that the political restrictions in the Order do not implicate the Applicants, who are not political parties, nor does it prevent the expression of opinion of their activities or the exercise of their recognised rights.

******

75. Article 9 (2) of the Charter provides as follows: *"Every individual shall have the right to express and disseminate his opinions within the law."* It guarantees the right of individuals to express, disseminate and receive information subject to restrictions in accordance with the law. In considering whether the right of the Applicants to freedom of expression has been violated, the litmus test is proof that the ban has caused a freeze on their ability to express, disseminate and receive information which has occasioned some damages to the Applicants.

76. The freedom of expression by an individual is distinguishable from that of a legal person. While an individual may claim the right to express an opinion on any matter of public interest, this wide ambit is not available to a legal person. A legal person is not a human being but a person in law. Consequently, all its characteristics are determined by the legal mandate of its creation. A legal person must therefore conduct its activities in line with the law that created it failing which such activity will be declared ultra vires, null and void.

77. It follows that a legal person who alleges the violation of its freedom of expression must prove that the subject-matter for which an expression of opinion is allegedly denied is within its mandate and necessary for the full realization of the aims and objective of its existence.

78. In the instant case, the Applicants who are NGOs operating within the jurisdiction of the Respondent, allege that the ban on political demonstrations by Order N° 7580 / MINSTSP of 20 July 2011 adopted by the Respondent violated their right to freedom of expression. To succeed in this claim, it behooves on the Applicants to specify the aims and objectives for which they were registered and show how the said ban prevented the dissemination and or receipt of information or opinion in regards to their legitimate activities.

79. The Records before the Court do not disclose the objectives for which the Applicants were registered and the Court is unable to conjecture same. The Court has held that *"It is a general rule in law that during trial, the party that makes allegations must provide evidence. The onus of constituting and demonstrating evidence is therefore upon the litigating parties. They must use all the legal mean available and furnish the points of evidence which go to support their claims. The evidence must be convincing in order to establish a link with the alleged facts." GARBA DAOUDA VS REPUBLIC OF BENIN, PARAGRAPH 35.*

80. As earlier stated the Order N° 7580 / MINSTSP of 20 July 2011 is a ban on demonstration of political nature with religious, cultural, sporting and social demonstration excepted. Since the object of the ban is of a political nature, the Applicants are obliged to prove that their mandate entails

politically-centered activities for which they are registered either as political parties or organisations with the mandate to carry out advocacy, promotion, outreach or support for engagement in participation in government or other associated politically based activities. In the absence of this vital and determinate information, the Court is unable to determine that the said ban negatively impacted the realization of the mandate of the Applicants.

81. In this wise, The Court aligns with the defense of the Respondent in Document 3 page 7 paragraph 6 when they pleaded that "*It is indisputable that the restrictions in the Order relate to demonstrations of a political nature and in no way concern the activities recognised to the applicants (who, it is worth noting, are not political parties), nor do they oppose the expression of their activities or the exercise of their recognised rights.'*

82. The Applicants having failed to prove the causal link between the alleged violation of their right to freedom of expression and the ban on political demonstration, they have a fortiori failed to prove that they are victims who suffered damages from the action of the Respondent in banning political demonstration. The Court agrees with the Respondent when they pleaded in Document 3 page 6 "*that the Applicants who allege to be victims do not demonstrate case of violation of their rights no claim that they had suffered as a result of the restrictions of the Order N° 7580 / MINSTSP of 20 July 2011.*

83. Since the Court has held that the Applicants have failed to prove their locus standi to initiate this action, a further examination of the contested

Order N° 7580 / MINSTSP of 20 July 2011 to determine its compliance with human rights standards therefore is moot.

84. Based on the above analysis, the Court holds that the allegation of the Applicants for the violation of their right to freedom of expression being unsubstantiated fails and is hereby dismissed.

85. Though the Court has earlier upheld the Applicants' competence to maintain this action in a representative capacity on behalf of the Senegalese people, the Court will nevertheless proceed to determine whether the Applicants have proved the allegation that the ban on political demonstration violated the Senegalese' rights to freedom of expression, freedom of assembly and freedom of movement. The Court will now examine seriatim the allegations of the violation of these rights.

Allegation of violation of freedom of expression of the Senegalese people.

86. The case of the Applicants is that the Ministerial Order of 20 July 2011 is an unjustified restriction on the freedom of expression of all the inhabitants of Senegal. They state that they do not have the possibility of fully expressing their opinions because of the prohibition imposed by the Ministerial Order of 20 July 2011. That in order to restrict freedom of expression, sufficient grounds must be put forward.

87. In Response, the Respondent argued that regarding the Senegalese community on whose behalf the Applicants claim to be acting, the Applicants have not provided any proof that the Senegalese are victims of the said Order. On the contrary, the Order was issued to ensure their safety from vandalism, anticipate the permanent threat of terrorism and preserve

public order in the interests of national security, safety of others, health, morals or rights and freedoms of individuals. They also contend that the ban concerned only demonstrations of a political nature whilst other demonstrations like religious, cultural and the likes were not affected by the ban.

****

88. Article 9(2) of the African Charter provides for the right to freedom of expression, it states thus: *"Every individual shall have the right to express and disseminate his opinions within the law."*

89. Article 19 (2) and (3) of the International Covenant on Civil and Political Rights (ICCPR) which provides an expanded description of the right to freedom of expression provides that:

    2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
    3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
    (a) For respect of the rights or reputations of others;
    (b) For the protection of national security or of public order (ordre public), or of public health or morals."

90. Freedom of expression is a fundamental right that is necessary in a democratic society, crucial to its progress and a key element of the civil

society. It includes the freedom to hold, share and explore opinions and ideas in various forms. The European Court has also recognised that freedom of expression includes the right of individuals or groups to express their views through public protest and demonstration, which makes it closely linked to the right to peaceful assembly.

91. Freedom of expression offers protection for various types of discourse, including political and religious, as well as enabling cultural and artistic expression. *LINGENS V. AUSTRIA, 8 JULY 1986 (APPLICATION NO. 9815/82). JUDGMENT. STRASBOURG. 8 JULY 1986; ŞENER V. TURKEY, 18 JULY 2000 26680/95 [2000] ECHR 377 (18 JULY 2000.* See also *"Applicability of Article 10 of the Convention*" in the *European Court of Human Rights Guide on Article 10 of the European Convention on Human Rights, Freedom of Expression, Page 12-14.*

92. The African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information in Africa (ACHPR Principles) in expressing the importance of the right stated that "*Freedom of expression and access to information are fundamental rights protected under the African Charter and other international human rights laws and standards. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights."* Principle 1, paragraph 1.

93. The Court recognised the fundamental nature of this right when it held that "*Freedom of expression is a fundamental human right and full*

enjoyment of this right is central to achieving individual freedoms and to developing democracy. It is not only the cornerstone of democracy, but indispensable to a thriving civil society." FEDERATION OF AFRICAN JOURNALISTS & 4 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 PAGE 32.

94. In the instant case the Applicants allege that Order No. 007580/MINT/SP of 20 July 2011 (Exhibit No. 1), banning all demonstrations in the area between El Hadji Malik Sy Avenue and Cape Manuel as well as in the immediate vicinity of the Renaissance Monument and in front of hospitals (the Order), violates their freedom of expression and that of the Senegalese people. The Respondent on its part asserts that the Order was issued for the protection of the people and made in the interest of national security, public safety, public order, health and freedoms of others and was only related to demonstrations of a political nature.

95. The Court notes that the challenged Order is a ban in respect of demonstrations of political nature. The apt issue to determine therefore is whether the ban on public demonstration on political matters is one of public interest that justifies the invocation of the principles of *actio popularis* to enable the Applicants to act for the Senegalese People. In other words whether the ban on demonstration of a political nature is of such public interest for the Senegalese to clothe the Applicants with the capacity to act on their behalf.

96. The Court recalls the exact wordings of the relevant phrase of the challenged Order ... as follows: *For security reasons, **demonstrations of a political nature** (*Emphasis added) *are prohibited in the area between El*

Hadj Malick Sy Avenue and Cape Manuel, particularly in front of the buildings housing the National Assembly, Senate, Economic and Social Council, Courts and Tribunals, Palais de la République, Administrative Building and Independence Square.

97. The key phrase therefore is ***demonstrations of a political nature.*** Considering that the said Order did not define 'political nature', however in order to progress constructively in the determination of this Application, it is imperative to know what *'politics'* means to enable an understanding of an event of '*political nature'*. Wikipedia defines politics *as "the way the countries are governed and the ways that government make rules and laws*." See Simple.m.wikipedia.org. Merriam-Webster dictionary also defines it as ***"****the art and science of government"* See Merriam-Webster.com. If from these definitions, politics can simply be said to be the way a country is governed, it follows that every citizen who already being conferred with an inherent right to express an opinion on any matter as provided by Article 13 of the Charter will *a fortiori* have the right to express an opinion on how their country is governed. The Court is mindful of the fact that not every Senegalese will have a political opinion to express. However any Senegalese or group of them that have a political opinion to express is legally within their rights to so do. For instance, a demonstration to protest the content of a new electoral law is clearly an opinion of a political nature as that law implicates the election of those to govern in the government. The Court is therefore of the considered opinion that a demonstration of a political nature is available to all adult Senegalese. Though its number cannot be pre-determined the right is a matter of public interest which must be protected.

98. An ancillary issue raised by the Respondent requires an examination whether this opinion of a political nature must necessarily be expressed through the platform of a political party. Indeed political parties have the advantage of collectively advancing the cause of their members as it relates to how a country is governed. Nevertheless, as stated above, all Senegalese have the inherent right to express a political opinion which cannot be forcefully subsumed under the umbrella of a political party.

99. Having made this clarification, the Court hastens to state that while the guarantee of freedom of expression is not absolute, interference is permissible under certain circumstances including interests of national security, public safety, public order, health and freedoms of others. ARTICLE 19 (3) A & B ICCPR.

100. Thus where there is an interference, the Respondent is obliged to justify same with sufficient reason to the satisfaction of the Court. In the instant case, the Respondent merely stated that the ban on political demonstration was to avert the breakdown of national security. Upon examination of Order N° 7580 / MINSTSP of 20 July 2011 and the circumstances allegedly justifying the ban on political demonstration by the Respondent, the Court is of the considered opinion that the order is unduly broad and vague which is supported by the decisions of the Supreme Court of Senegal wherein it stated that the sole security justification is insufficient and obliges the Respondent "*...to specify the alleged risk as well as the absence of alternative measures to the ban, the only reference to disturbance of public order being imprecise and inadequate*" (Exhibit 5 Judgment N° J / 176 / RG / 15 of 11/05/2015).

101. Reference of threat to national security *simplicita* is not a magic wand to deflect an allegation of the violation of a human rights violation without specifying the issue of national security being protected or sought to be protected.

102. Additionally, the Court notes the duration of the ban which came into operation on 20 July 2011 and remains active up to 14 September 2020 when this Application was filed. The apt question to ask is whether the alleged threat to national security still exists in reality even as of the time this Application was filed. The Respondent ought to provide convincing reason(s) for the continued operation of the ban which has assumed an indefinite character.

103. The Court notes that even when interference in a guaranteed human right is lawful, it is not expected to serve as a perpetual obstruction or denial of the enjoyment of the right. The Court is of the considered opinion that the prolonged and indefinite restriction imposed by the operation of the ban is unreasonable and unjustified. Indeed States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon the right. *DJAVIT AN V. TURKEY (APPLICATION NO. 20652/92) JUDGMENT OF 20 FEBRUARY 2003.*

104. The purpose of any interference by Government is to facilitate and not to prevent or restrict the right, as steps taken relative to the rights to freedom of assembly shall have the primary purpose of enabling the exercise of the rights and not to restrict it. *(PARAGRAPH 71 OF THE ACHPR GUIDELINES ON FREEDOM OF ASSOCIATION.*

105. The above cited decisions though delivered in respect of right to assembly is equally relevant and applicable to other rights with restrictive provisions like freedom of expression.

106. The Court is therefore unable to support the justification of the ban on political demonstration by the Respondent which is premised on threat to national security. Neither is it able to legitimise the indefinite duration of the operation of the ban. Having earlier demonstrated the intertwining relationship between freedom of assembly and of expression, the Court has come to the inevitable conclusion that the Order N° 7580 / MINSTSP of 20 July 2011 which bans political demonstrations in the perimeter designated in the same Order violated the right of the Senegalese people as alleged.

107. The Court therefore holds that the Respondent violated the right of the Senegalese people to freedom of expression contrary to Article 9 of the Charter.

Allegation of Violation of the right to freedom of assembly

108. The Applicants state that Order N° 7580 / MINSTSP of 20 July 2011 prohibits all demonstrations of a political nature in the entire area between avenue El Hadji Malik Sy and Cap Manuel as well as in the immediate vicinity of the Renaissance Monument and in front of hospitals for "security reasons" with no justification.

109. They argue that the said Order greatly restricts the right of assembly and the right of demonstration of the whole of the Senegalese population who can no longer organise a meeting or rally in the area defined by the order.

110. They further assert that the Senegalese Supreme Court, through numerous rulings, adjudged that the sole security justification adduced by the Respondent is insufficient to justify the orders prohibiting public events in the area determined by the Ministerial Order. They cite the judgment of 9 June 2016, which held that the Prefect is "*obliged to specify the alleged risk as well as the absence of alternative measures to the ban, that the* "*only reference to disturbance of public order being imprecise and inadequate"* (Exhibit 5). Consequently the Administrative Chamber of the Court considered that the prefectural order violates Article 10 of the Senegalese Constitution and in particular the freedom to express oneself in a peaceful march.

111. It is the further contention of the Applicants that in addition to the lack of justification for the prohibition, many demonstrations of a political nature have taken place in peace, without any incident. Some of which are the demonstration of 30 August 2012 in front of the Embassy of the Gambia following the execution of a condemned Senegalese to death in the country, and the 2002 demonstration in front of the Embassy of Nigeria against the sentences to stoning of women in the country.

112. The Applicants assert that a real risk must exist to justify such a ban but and as past peaceful protests have proven, such a risk does not exist. That moreover, less stringent measures could have been put in place by virtue of the principle of proportionality.

113. Thus they urge the Court to hold that the Ministerial Order N° 7580 / MINSTSP of 20 July 2011 violates the freedom of assembly and demonstration of all the inhabitants of Senegal.

114. In its response, the Respondent argues that the Applicants failed to state that these freedoms are exercised in accordance with the conditions provided for by law.

115. They submit that while freedom of assembly is closely related to other fundamental rights such as freedom of expression and freedom of movement, the European Court of Human Rights (ECHR) applies the principle of *lex specialis*. According to this principle, when several freedoms are intertwined in the context of a demonstration, it is from the point of view of the law most relevant to the facts that the situation should be approached. The other rights should be seen as the *lex generalis*. It should be noted that unlike European countries, Senegal has enshrined the freedom of demonstration, which reinforces the *lex specialis* in this case.

116. They further submitted that the Court is not competent to examine the decree of the Minister of the Interior of July 20, 2011 or to verify its conformity with the international obligations of Senegal. They therefore urge the Court to reject the claims of the Applicants.

******

117. Article 11 of the African Charter which guarantees the right to freely assemble with others provides thus: *"Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those*

enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

118. The ACHPR Guidelines on Freedom of Association and Assembly in Africa defines assembly as follows: *"Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose."(*Paragraph 3).
119. The right to assembly is a fundamental right in a democratic society and can only be restricted under certain circumstances. Any restriction to the right to freely assemble must be prescribed by law, necessary and proportionate for the purposes of protecting national security or public safety, preventing disorder or criminal activities, protecting the health or morals of the public, or protecting the rights and freedoms of other people. See also European Court of Human Rights' Guide on Article 11 of the European Convention on Human Rights- Freedom of Assembly and Association, paragraph 53.

120. It is also pertinent to state that "*participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens."* See ACHPR Guidelines, Paragraph 71 (Supra). *AMNESTY INTERNATIONAL AND OTHERS V. SUDAN, COMMUNICATION. NOS. 48/90, 50/91, 52/91 AND 89/93 (1999), PARAGRAPHS. 81-82.*

121. In the instant case, it is the Applicants' contention that Order N° 7580 / MINSTSP of 20 July 2011 prohibiting political demonstrations in certain areas of the city violates their rights to freedom of assembly, while the Respondent on its part contends that the Court lacks competence to examine the laws of Member States and by implication the instant Order prohibiting demonstrations.

122. The Court has previously addressed, under the admissibility head, the Respondent's contention that the Court lacks competence to examine the laws of the Member States and will no longer dwell on the same issue. Besides, the Court has held that *"When a sovereign State freely assumes international obligation and is being held accountable in respect of those obligations, that State cannot renounce those obligations under the pretext that the matter in question is one that falls essentially within its domestic jurisdiction.*" *MUSA SAIDYKHAN V. REPUBLIC OF THE GAMBIA RULING NO. ECW/CCJ/RUL/04/09 (2010) CCJELR PAGE 160.*

123. The Court will now proceed to analyse whether the rights of the Applicants to assembly has been violated by the issuance of Order N° 7580 / MINSTSP of 20 July 2011.

124. The Court recalls that States are obligated not to enact laws that restrict the exercise of fundamental rights enshrined in regional and international human rights treaties that they are parties to. In this regard, the African Commission on Human and Peoples' Rights stated that *"competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the*

constitution and international human rights standards" COMMUNICATION 147/95 and 149/96 SIR DAWDA K JAWARA V THE GAMBIA 11 MAY 2000.

125. The Court notes that as with some other human rights, there is a nexus between the rights to freedom of assembly and freedom of expression. They are intertwined because the exercise of these rights entails a gathering of persons of the same mind, for the purpose of expressing their opinion on issues that concern them. Therefore, more often than not, the prohibition of the right to assembly automatically affects the right to freedom of expression. In this regard, the Court held thus,

    "Given the expressive nature of many protests and the role they play in protecting opinion, international jurisprudence has recognized that the right to freedom of peaceful assembly and the right to freedom of expression are, in practice, often closely linked, with the protection of personal opinions is one of the goals of freedom of peaceful assembly." *ILLIA MALAM MAMANE SAIDAT V REPUBLIC OF NIGER JUDGMENT NO. ECW/CCJ/JUD /17/21PAGE 32 PARAGRAPH 134.*

126. Having earlier held that interference with the rights of the Senegalese to express themselves occasioned by Order N° 7580 / MINSTSP of 20 July 2011 is a violation of their right to freedom of expression, (paragraph 86 supra), the Court finds that the automatic link between the right to freedom of expression and the right to assembly results in the violation of the right to assembly.

127. The Court hereby holds that the right of the Senegalese to freedom of assembly has been violated by Order N° 7580 / MINSTSP of 20 July 2011.

Allegation of violation of Freedom of movement

128. The Applicants contend that the Ministerial Order, by preventing any demonstration in the area located between avenue El Hadji Malik Sy and Cap Manuel as well as in the immediate vicinity of the Renaissance Monument and in front of hospitals, restricts the freedom of movement of Senegalese citizens.

129. They assert that demonstrations can sometimes be likened to parades and marches on the public highway. That thus, the Ministerial Order violates the freedom of movement of the citizens since they no longer have the possibility of moving freely during demonstrations.

130. They argue that although the Respondent may restrict the freedom of movement of its citizens, this restriction must be sufficiently justified. That "reasons of security" are insufficient and remain insufficient as regards the restriction on the freedom of movement.

131. In conclusion, they submit that the Republic of Senegal, through this order of 20 July 2011, violated the human rights and fundamental freedoms of Senegalese.

132. In their response, the Respondent argue that the Applicants' make speculations by their statement that "the Ministerial Order violates freedom of movement of its citizens since they are no longer able to move freely during demonstrations".

133. That this is a deliberate distortion of the Order which only prohibits political demonstrations but does not prevent cultural and religious events or the movement of citizens within the protected area. Again, no evidence of any violation was reported by the Applicants.

******

134. Article 12 (1) and (2) of the Charter which are relevant to the case at hand provides for the right of movement, states thus:

"1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality."

135. The right to freedom of movement is a fundamental right which envisages that individuals are able to live, work and move freely within the borders of a state; leave their state; and return to their state whenever they please in accordance with the law. The African Commission succinctly put it when it held that *"Free movement is crucial for the protection and promotion of human rights and fundamental freedoms. Freedom of movement and residence are two sides of the same coin."* *COMMUNICATION 279/03-296/05, SUDAN HUMAN RIGHTS ORGANISATION & CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) V SUDAN (2009), PARAGRAPH 187.*

136. Further, *"The right to freedom of movement is a basic element of liberty. The freedom to leave one country for another allows individuals to escape political systems that deny them other basic freedoms, thus serving as a right of last resort. The right to return to one's own country similarly guards against government repression by barring the state from exiling disfavored groups or individuals. The right to return also serves to strengthen the right to leave a country, in the case of non-nationals, as it*

ensures them that they will have a place to go.” CUBA V UNITED STATES, https://www.hrw.org/reports/2005/cuba1005/4.htm . See also *SIR DAWDA K. JAWARA V THE GAMBIA (SUPRA).*

137. In the instant case, the Court notes that the said Order has not prevented citizens of the Respondent from moving within the borders of their country, neither has it prevented them from freely moving outside the borders of and returning to their country nor within the defined areas indicated in the Order. The Court has not been presented with evidence to show that the Senegalese have been prevented from accessing the defined areas in the course of carrying out their daily activities.

138. The fact that they have been prevented from carrying out political demonstrations within these designated areas of the city of Dakar, does not amount to the violation of their right to freedom of movement.

139. The Court in its considered opinion does not agree with the Applicant that the right to movement is implicated in the instant case, and consequently holds that the rights of Senegalese people to freedom of movement has not been violated due to the prohibition of Order N° 7580 / MINSTSP of 20 July 2011. The claim of the Applicant the right to freedom of movement is hereby dismissed.

X. REPARATIONS

140. The Applicants seek the following reliefs from the Court:

i. Find the violation by the Republic of Senegal of the freedom of assembly and demonstration guaranteed by the provisions of Articles 8 and 10 of the Constitution of the Republic of Senegal, Articles 8 and 11 of the African Charter on Human Rights and Peoples, Articles 18§3 and

21 of the International Covenant on Civil and Political Rights as well as Article 20§1 of the Universal Declaration of Human Rights;

ii. Find the violation by the Republic of Senegal of the freedom of expression guaranteed by the Constitution of Senegal in its Articles 8 and 10 but also by the provisions of Article 9§2 of the African Charter on Human and Peoples' Rights, Article 19 of the Universal Declaration of Human Rights and Article 19§2 of the International Covenant on Civil and Political Rights;

iii. Find the violation by the Republic of Senegal of the freedom of movement guaranteed by Article 8 of the Constitution of Senegal but also by the provisions of Article 12§1 of the African Charter on Human and Peoples' Rights, Article 13§1 of the Universal Declaration of Human Rights and Article 12§1 of the International Covenant on Civil and Political Rights;

iv. Consequently, order the Republic of Senegal to pay the sum of 500,000,000 CFA francs in compensation to Amnesty International Senegal Section and to the Senegalese League of Human Rights;

v. Also order the Republic of Senegal to bear the entire costs.

141. On their part, the Respondent argue that in order to claim compensation, the Applicants must be personally and directly victims of a violation of guaranteed human rights and have a personal interest to bring action.

142. They also state that the Applicants have not justified any violation or damage suffered to claim compensation. That the Applicants claim for the

staggering sum of 500,000,000 CFA Francs in the absence of violations of their human rights and of any prejudice suffered by them cannot be justified.

143. That the repeal of the offending decree sought by the Applicants is not within the purview of the Court's mandate.

144. They therefore urge the Court to dismiss all claims made by the Applicants.

******

Analysis of the Court

145. It is a general principle of law that any violation of an international obligation that has produced damage entails the obligation to make reparations. *HEMBADOON CHIA & 7 ORS V. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/21/18 PAGE 33.*

146. A State is required to make full reparation for any injury caused by a human rights violation for which it is has been found internationally responsible. Reparation comes in various forms including restitution of the original situation if possible, compensation, satisfaction that is, an acknowledgement of the breach or an apology for same. *MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 2 ORS ECW/CCJ/JUD/12/14, PAGE 40.* See also *HAMMA HIYA & ANOR V REPUBLIC OF MALI JUDGMENT NO. ECW/CCJ/JUD/05/21 PARAGRAPH 64.*

147. An important component for the grant of reparations is that there must be established a causal link between the violation found and the damage

caused to a victim for which reparation is sought. In this regard the Court held that, "*To be a victim necessitates the establishment of a link between the Applicant and the alleged violation of human rights, that is, there must exist facts to show that the applicant has suffered a direct injury or loss traceable to the acts of the Respondent. SAWADOGO PAUL & 3 ORS v. REPUBLIC OF BURKINA FASO ECW/CCJ/JUD/07/20 PAGE 10.*

Alleged violation of Freedom of assembly and movement.

148. The violation of these rights were brought both in personal and representative capacities. The Court having made different findings in both capacities will address the reparations separately.

Alleged Violation of the Applicants' right to assembly and movement.

149. Having held that the Applicants lack the competence as legal persons to institute an action for the violation of their rights to assembly and movement and having dismissed same, the Court declines the compensation claimed and dismisses the reliefs in that wise.

Alleged Violation of the Applicants' right to freedom of expression

150. Having held that though the Applicants have the capacity to maintain an action for the violation of their right to freedom of expression but lacks locus standi, the Court declines the compensation claimed and dismisses the reliefs claimed in that wise.

Alleged Violation of The Senegalese' right to movement.

151. Having held that the Respondent did not violate the Senegalese' right to movement, the claim for compensation is hereby dismissed.

Alleged Violation of the right of the Senegalese to assembly and freedom of expression.

152. Though the Court has held that the rights of the Senegalese to assembly and freedom of expression were violated by the ban on political demonstrations, they have not identified the harm or damage they suffered, the basis upon which the Respondent challenged the relief for compensation claimed by the Applicants.

153. The Applicants assert in their submission that freedom of expression includes freedom to disseminate one's opinion regardless of the means of expression. That carrying out a demonstration is a means of expression which is protected by law because it is a means of expressing one's opinions. They state that they do not have the possibility of fully expressing their opinions because of the prohibition imposed by the Ministerial Order of 20 July 2011.

154. The Court in this wise is not unmindful of the fact that compensation may be for pecuniary or non-pecuniary damages. With regards to pecuniary damages, they are awarded as redress for tangible harm, injury or loss which are capable of monetary calculations. Where pecuniary damages are claimed, a victim or applicant must provide documentary evidence of losses incurred by him/her including receipts, proof of ownership of property, proof of employment and payment of salaries etc.

155. Non-pecuniary damages or moral damages as it is sometimes called seek to compensate victims for suffering, including the psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation.

BENEFICIARIES OF LATE NORBET ZONGO & 4 ORS V. BURKINA FASO (REPARATIONS) 2015 1 AFCLR 258.

156. While the specific nature of the damage suffered by the Senegalese was not articulated, however, the Court is of the opinion that any violation of a guaranteed right necessarily wrought with it a form of damage. In the instant case the harm/damage naturally flowing from a violation of a right to peaceful assembly and expression of opinion is one of obvious distress, disappointment, frustration at the truncation of the opportunity to gather and express opinions on political matters affecting the Respondent State. This is more so that the ban has been active for over nine years from 20 July 2011 to the time of filing this Application on 14 September 2020.

157. The damages that will be imputed to the Senegalese will be non-pecuniary as the feelings and emotions above described are intangible and not capable of precise financial computation. Therefore an award for moral damages in form of an aggregate compensation in monetary form is deserving of the people.

158. The Court is however faced with a contradiction in the pleadings of the Applicants. On one hand they claim to institute this action in a representative capacity on behalf of the Senegalese which is reflected in their pleadings thus: *Whereas the applicants therefore decided to file an action before the Court of Justice of the Economic Community of West African States against the Republic of Senegal for violation of the fundamental rights of Senegalese citizens"* DOC 1 PAGE 3.

159. However on the other hand, under their claim for reparation, they urge the Court pay to them the said compensation for the violation of the rights of Senegalese people which they put thus: *Consequently, order the Republic of Senegal to pay the sum of 500,000,000 CFA francs in compensation to Amnesty International Senegal Section and to the Senegalese League of Human Rights; DOC 1* CLAIM IV PAGE 11.

160. The Court is of the considered opinion that the principle of representative action for human rights violation does not confer any benefit on the applicant who is acting on behalf of others. "*The Court has held in plethora of cases that non- governmental organisations (NGOs) and public spirited individuals can institute actions on behalf group of victims from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and financial capacity to maintain legal action of such magnitude which affects the rights of many people, as public interest issues are generally for the welfare and well-being of every individual in a society*." (Emphasis ours). *THE REGISTERED TRUSTEES OF JAMA'A FOUNDATION & 5 ORS V. FEDERAL REPUBLIC OF NIGERIA & 1 ECW/CCJ/JUD/04/20 PAGE 14.*

161. Thus the Court concludes that the Applicants as representatives of the Senegalese people cannot benefit from the reliefs granted to the Applicants who they are representing. The Court therefore finds that the Applicants are not entitled to damages of 500,000,000 CFA claimed for themselves, as the said compensation is to assuage the alleged damages suffered by peoples whom they allegedly represent.

162. The Court therefore denies the compensation of 500,000,000 CFA claimed by the Applicants for themselves and holds that Senegalese peoples on behalf of whom the action was initiated and whose rights the Court has held have been violated are the proper parties entitled to compensation.

163. Ahead of determining the precise amount to be awarded to the Senegalese whom the Court has held are entitled to compensation, the Court notes that an immediate challenge that flies out of this process is the determination of the mode of payment of monetary compensation to a large and indefinable group. Senegal has a population of almost 17 million people with a sizeable number of adult male and female who have the capacity to express their political opinions on the situation in Senegal. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=SN (accessed on 24/2/2022 1.07pm). The payment of monetary compensation for this indeterminable group is clearly a herculean task the Court is not inclined to undertake.

164. Indeed, the Court expressed its unwillingness based on the impracticability of assessing damages in a similar situation when an NGO claimed a monetary compensation of 1 Billion Dollars (USD) ($ 1,000,000,000) for the victims of human rights violations in the Niger Delta, Nigeria. The Court elaborated thus; *"The Court acknowledges that the continuous environmental degradation in the Niger Delta Region produced devastating impact on the livelihood of the population...; But in its application and through the whole proceedings, the Plaintiff failed to identify a single victim to whom the requested pecuniary compensation could be awarded. In any case, if the pecuniary compensation was to be granted to individual victims, a serious problem could arise in terms of*

justice, morality and equity: within a very large population, what would be the criteria to identify the victims that deserve compensation? Why compensate someone and not compensate his neighbour? Based on which criteria should be determined the amount each victim would receive? Who would manage that one Billion Dollars? The meaning of this set of questions is to leave clear the impracticability of that solution. In case of human rights violations that affect undetermined number of victims or a very large population, as in the instant case, the compensation shall come not as an individual pecuniary advantage, but as a collective benefit adequate to repair, as completely as possible, the collective harm that a violation of a collective right causes. Based on the above reasons, the prayer for monetary compensation of one Billion US Dollars to the victims is dismissed" SERAP Vs NIGERIA - JUDGMENT N° ECW/CCJ/JUD/18/12.

165. In a similar vein where compensation was claimed for 1 million internally displaced persons, the Court held that "... *Further, the plaintiff has not given the method of distribution of the damages nor has the plaintiff specified who the beneficiaries are or would be and how they are determined. In the circumstances, this court is not inclined to grant the damages sought and hereby declines to do so" SERAP &12 ORS V NIGERIA ECW/CCJ/JUD/19/16, PARAGRAPH 8.4.3.*

166. The Court also reiterated its position in another case when it held that : " "*The Applicants have made claims for some compensation on behalf of the communities. The Court has no record of the details of the victims, their names, gender, age, address; the properties destroyed have also not been specifically identified nor their value indicated. In this wise, the Court is unable to award any monetary compensation." REV FATHER*

SOLOMON MFA & 11 ORS V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/06/19.

167. In view of the above reasoning, the Court is equally persuaded that in the instant case, it cannot do justice in awarding damages to an indeterminable number or unidentified victims and therefore declines to award the sum of sum of five hundred million (500,000,000) CFA Francs as compensation claimed by the Applicants on behalf of the Senegalese people.

168. The Court is, however, mindful that its function in terms of protection does not stop at taking note of human rights violation. If it were to end in merely taking note of human rights violations, the exercise of such a function would be of no practical interest for the victims, who, in the final analysis, are to be protected and provided with relief. The obligation of granting relief for the violation of human rights is a universally accepted principle. The Court acts indeed within the limits of its prerogatives when it indicates for every case brought before it, the reparation it deems appropriate.

169. In the instant case, in making orders for reparation, the Court in ensuring that measures are taken to guide the Respondent – the Republic of Senegal to achieve the objectives of Article 9 of the Charter as it concerns the Senegalese People, namely guarantee of freedom of expression, the Court therefore orders the Respondent to repeal the contested Order No.007580/MINT/SP dated 20 July 2011 to maintain the enjoyment of the said right.

XI. COSTS

170. The Applicants in their submission prays the Court to order the Respondent to bear the costs of the proceedings. The Respondent also prays the Court to order the Applicants to bear the costs.

*****

171. In line with the provision of Article 66 (2) of the Rules of Court which provides that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings",* the Court hereby orders the Respondent to bear the Costs of the proceedings consequently, The Registry is hereby directed to assess the costs payable accordingly.

XII. OPERATIVE CLAUSE

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

As to jurisdiction:

i. **Declares** that the Court has jurisdiction;

ii. **Dismisses** the Respondent's Preliminary Objection to that effect;

As to admissibility:

iii. **Declares** the Application is admissible as it relates to the Applicants' right to freedom of expression.

iv. **Declares** the Application is inadmissible as it relates violation of the Applicants' rights to freedom of assembly and freedom of movement.

v. **Declares** that the Application is admissible as it relates to the violation of the rights of the Senegalese people to movement, to assemble freely, and freedom of expression.

As to merits:

vi. **Declares** that the Applicants' rights to freedom of expression was not violated by the Respondent.

vii. **Declares** that the rights of the Senegalese people to assemble freely and freedom of expression was violated by the Respondent.

viii. **Declares** that the rights of the Senegalese people to movement was not violated.

As to reparation:

ix. **Dismisses** the Applicants' claim for compensation of the sum of five hundred million (500,000,000) CFA Francs for themselves.

x. **Dismisses** the Applicants' claim for compensation of the sum of five hundred million (500,000,000) CFA Francs on behalf of the Senegalese people.

xi. **Orders** the Respondent to repeal Order No.007580/MINT/SP dated 20 July 2011 and take all immediate effective measures to ensure restoration of the right of freedom of expression of the Senegalese people.

As to costs

xii. Orders both Parties to bear their own costs.

As to compliance and reporting:

xiii. **Orders** the Respondent State to submit to the Court within three (3) months of the date of the notification of this judgment, a report on the measures taken to implement the orders set-forth herein.

Hon. Justice Edward Amoako ASANTE – Presiding ……………………………

Hon. Justice Ouattara GBERI-BÈ – Member …………………………….

Hon. Justice Dupe ATOKI- Judge Rapporteur …..…………………………

Dr. Athanase ATTANON - Deputy Chief Registrar ……………..…………..

Done in Accra, this 31st Day of March 2022 in English and translated into French and Portuguese.