



**ACHPR**  
African Commission on  
Human and Peoples' Rights

Human Rights our  
Collective Responsibility

# **Communication 502/14**

**S.A.**

**v**

**Democratic Republic of Congo**

*Adopted by the  
African Commission on Human and Peoples' Rights  
During the 76<sup>th</sup> Ordinary Session done virtually from 19 July to 02 August 2023*



**Hon. Commissioner Remy Ngoy Lumbu  
Chairperson to the African Commission  
on Human and Peoples' Rights**



**Ms. Abiola Idowu-Ojo  
Executive Secretary to the African  
Commission on Human and Peoples' Rights**



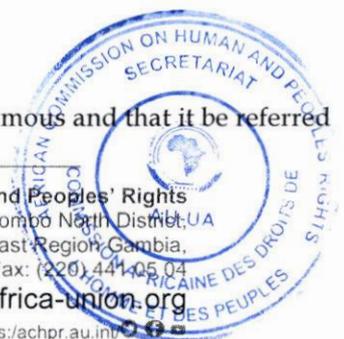
# **Decision of the African Commission on Human and Peoples' Rights on Merits**

## **Communication 502/14 - S.A.<sup>1</sup> v. Democratic Republic of Congo**

### **Summary of the Complaint**

- The Complaint was received at the Secretariat of the African Commission on Human and Peoples' Rights (Secretariat) on 21 November 2014.
- The Complaint was lodged by REDRESS Trust and Synergie pour l'Assistance Judiciaire aux Victimes des Violations des Droits Humains au Nord-Kivu, (Representatives), on behalf of S.A. (Complainant), a Congolese national.
- The Complaint was brought against the Democratic Republic of Congo (Respondent State), a party to the African Charter on Human and Peoples' Rights (African Charter), which it ratified on 20 July 1987.
- The Complainant first alleges that on 20 October 2008, in the context of fighting between the Armed Forces of the Democratic Republic of Congo (FARDC) and the Congrès National pour le Développement du Peuple (CNDP) in the province of North Kivu, Sergeant Shombo Chance left the frontline and went to his home near Goma.
- The Complainant alleges that on 29 October 2008, Sergeant Chance raped her while she was two (2) months pregnant, using an automatic rifle, threatening her and driving her outside her house, far from her husband and their children.

<sup>1</sup> The Complainant's Representatives requested that the name of the Complainant remain anonymous and that it be referred to as S.A.





- . The Complainant also adds that, still under threat, Sergeant Chance stole their radio and forced her and her husband to hand over to him the sum of \$120, which represented all their savings. She states that Sergeant Chance returned shortly afterwards, but the screams of the whole family made him leave.
- . The Complainant submits that Sergeant Chance was arrested by the FARDC after she reported the incident.
- . The Complainant alleges that on 5 November 2008, the Senior Military Prosecutor charged Sergeant Chance with rape and extortion.
- . The Complainant states that for the purpose of the investigation, Dr Rosette Kavira, an official at the Ministry of Public Affairs, examined her on 7 November 2008 and concluded that she had probably been raped.
0. The Complainant states that later, the hospital where the medical examination took place lost her medical report and for this reason she refused any further treatment, so she was never tested for HIV/AIDS.
1. The Complainant reveals that on 10 November 2008, she filed a civil claim with the Operational Military Tribunal (OMT) for compensation for non-material damage and the return of the sum of \$120 and the radio. The Complainant states that the action was brought against the accused and the Respondent State *in solidum*.
2. The Complainant states that on 17 November 2008, the North Kivu OMT issued a judgment sentencing Sergeant Shombo Chance to penal servitude for life and dismissing him from the army. She said that the judgment declared her claims as a civil party admissible and thereby ordered the reimbursement of the \$120 and the return of the radio by Sergeant Chance. She added that the accused and the Respondent State were also ordered to pay damages in the amount of \$10,000.
3. The Complainant avers that, following the announcement of the judgment, she approached the Registrar of the OMT more than once, to request payment. However, she contends that, the Registrar asked her to speak to her lawyer and told her that she would have to pay 10% of the total amount awarded. She says this discouraged her and she did not contact the Registrar again.
4. The Complainant states that on 17 October 2013, the OMT Registrar issued a judgment notification to Sergeant Chance and the Governor of North Kivu Province – in his capacity as representative of the Respondent State and ordered each to pay \$10,000 in damages and 13,425 Congolese francs (\$108.22) for





notification costs. She claimed that the notification was sent to the Governor's Secretariat, but not to Sergeant Chance.

5. The Complainant submits that on 28 July 2014, the Office of the Governor of North Kivu Province acknowledged receipt of a letter that her lawyer, Eugène Lurhondere Buzake, sent on 14 July 2014, copied to the Minister of Justice and Human Rights in Kinshasa and to REDRESS. She indicates that the letter requests the Office of the Governor of North Kivu Province to fulfil the obligation of the Respondent State to pay the compensation awarded by the OMT to the Complainant.
6. The Complainant alleges that to date, neither she nor her legal representatives have received any response from the Office of the Governor of North Kivu Province or the Ministry of Justice and Human Rights.
7. The Complainant claims that the stolen radio was returned to her during the proceedings. However, to date, she has not received either the \$120 stolen or the \$10,000 compensation payment awarded by the court.
8. The Complainant argues that the obstacles described above are not specific to her case, but are part of a general inability of the Respondent State to pay reparations ordered by the Court. She claims, for example, that until March 2011, none of the 31 women raped by FARDC soldiers in Mbandaka and 29 women raped by rebels in Songo Mboyo, Equateur Province, had received any payment of court-ordered compensation.
9. The Complainant asserts that the procedure for enforcing a court decision is very costly, time-consuming and energy-consuming, and does not allow for the seizure of government property, leaving victims to voluntarily enforce the compensation ordered by the court.

### Articles alleged to have been violated

0. The Complainant alleges that the facts described above constitute a violation of Articles 1, 2, 5, 7, 14 and 18 (3) of the African Charter, and Articles 2, 4, 8, 11 and 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol).

### Prayers

1. The Complainant prays the Commission to:





- i) Recognize that the facts described above constitute a violation of the rights protected under Articles 1, 2, 5, 7, 14 and 18 (3) of the African Charter, and Articles 2, 4, 8, 11 and 25 of the Maputo Protocol;
- ii) Recommend to the Respondent State, in recognition of the provisions violated, to ensure:
  - Specific Measures
    - a. The immediate execution of the judgment of the OMT of North Kivu in case No. 010/2008, rendered on 17 November 2008, including:
      - The payment of compensation in the amount of \$10,000 awarded to the Complainant; and
      - The return of the \$120;
    - b. The payment of interest on the above amounts at the rate of 6%<sup>2</sup>, calculated from the date of the judgment;
    - c. That Sergeant Chance serves the sentence ordered by the OMT judgment in case No. 010/2008, pronounced on 17 November 2008, in accordance with the applicable laws and procedures and to inform the Complainant in case of release and/or escape.
  - General Measures
    - Reforming laws and institutions to provide adequate guarantees that these violations will not be repeated in the future, including:
      - a. Reforming the legislation and process for enforcing judgments against the State, including removing the requirements for victims to take legal action, and removing all fees for the enforcement of judgments;
      - b. Designating a government authority to coordinate the implementation of court-ordered compensation awards against the State, including those for victims of rape and other serious forms of sexual violence;
      - c. Creating a specific budget line in the national budget to pay court-ordered compensation for victims of torture, including sexual violence, and allocating funds to this line in each budget cycle, with a transparent monitoring mechanism to ensure that the allocated budget is fully distributed to beneficiaries without diversion or loss;
      - d. Undertaking comprehensive reform of the justice system, including the provision of adequate resources, to ensure that crimes, including sexual violence, are prosecuted and that women have effective remedies to address alleged violations;
      - e. Taking positive steps to overcome the barriers women face in accessing these remedies, for example by providing effective free legal aid;

<sup>2</sup> See International Court of Justice, Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), Judgment of 19 June 2012, paras 56-57.



- f. Establishing a system of consolidated and disaggregated data on the response to allegations of sexual violence, including complaints filed, prosecutions completed, compensation awarded and awards implemented, to monitor progress and provide better information to victims;
- g. Establishing a monitoring mechanism and providing it with sufficient resources to enable it to review the past conduct of individual military and police officers in relation to human rights violations and to ensure that, where there is evidence that a crime may have been committed, it is investigated and appropriate action is taken; and
- h. Establishing an administrative redress programme for victims of sexual violence, in accordance with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, to provide comprehensive reparation measures, including monetary compensation, rehabilitation and restitution.

## Procedure

2. The Complaint was received on 21 November 2014.
3. The Secretariat acknowledged receipt on 5 December 2014 by letter Ref: ACHPR/COMM/RDC/1887/14 and informed the Complainant that the matter will be considered on seizure at the next Session of the Commission.
4. By Note Verbale Ref: ACHPR/COMM/502/14/519/15 of 8 April 2015, the Secretariat notified the Respondent State of the lodging of a Complaint against it, which the Commission has been seized of.
5. By correspondence of 4 June 2015, the representatives of the Complainant transmitted to the Secretariat submissions on Admissibility, receipt of which was acknowledged by the Secretariat by letter Ref: ACHPR/COMM/502/14/1051/15 of 6 July 2015.
6. By Note Verbale Ref: ACHPR/COMM/502/14/1050/15 of 6 July 2015, the Secretariat transmitted to the Respondent State the Complainant's submissions on Admissibility and invited it to submit its arguments on the admissibility of the Communication.
7. By Note Verbale Ref: ACHPR/COMM/502/14/1392/15 of 2 September 2015, the Secretariat retransmitted to the Respondent State the Complainant's submissions on Admissibility while inviting it to submit its arguments on the Admissibility of the Communication.





8. By Note Verbale Ref: ACHPR/COMM/502/14/1957/15 of 26 November 2015, the Secretariat reiterated to the Respondent State the request to submit its observations on the admissibility of the Communication.
9. At its 20<sup>th</sup> Extraordinary Session, the Commission considered the Communication on the basis of the Complainant's submissions alone and declared it admissible.
10. By letter Ref: ACHPR/COMM/502/14//RDC/1568/16 of 21 September 2016, the Secretariat notified the Complainant of the admissibility decision while inviting it to submit its arguments on the merits.
1. By correspondence of 21 February 2017, the representatives of the Complainant transmitted to the Secretariat the submissions on the merits of the Communication.
2. By Note Verbale Ref: ACHPR/COMM/502/14//RDC/750/22 of 19 May 2022, the Secretariat transmitted to the Respondent State the Complainant's submissions on the merits of the Communication while inviting it to submit its arguments on the merits of the case.
3. By Note Verbale Ref: ACHPR/COMM/502/14//RDC/282/23 of 7 March 2023, the Secretariat reiterated to the Respondent State the request to submit its observations on the merits of the Communication.

### **The Law on Admissibility**

#### **Complainant's Arguments on Admissibility**

4. The Complainant submits that the present Communication meets the admissibility requirements under Article 56 of the African Charter.
5. The Complainant states that the authors of this Communication have identified themselves in accordance with Article 56(1) of the African Charter, as REDRESS and SAJ. The Communication also identifies the Complainant, but for protection purposes, requests that her identity not be disclosed to the public.
6. Regarding the requirement set out in Article 56(2), the Complainant maintains that the Communication was lodged against the Respondent State, which ratified the Charter on 20 July 1987. The Complainant





further claims that the Communication denounces facts relating to serious violations of rights protected under the African Charter on the territory of the Respondent State.

7. Concerning the requirements of Article 56(3), the Complainant also argues that its Communication is written in a respectful language and thus meets the requirements of the African Charter.
8. The Complainant further argues that the present Communication complies with the requirements of Article 56(4) of the African Charter, adding that the facts recounted in its Complaint are contained in various reports issued by non-governmental organizations and the United Nations, and the annexes to the Communication include, in addition to the Complainant's statement, the official judgment of the OMT of North Kivu, the copy of the letter addressed to the Governor of North Kivu and the notification order issued by the Registrar of the OMT.
9. On the requirement of exhaustion of local remedies as required under Article 56(5), the Complainant states that she has exhausted all local remedies. She submits that in the present case the State has been served with the judgment of the OMT and that beyond the notification, local remedies to enforce the judgment are unavailable, ineffective and insufficient.
0. The Complainant further argues that in this case, the requirements of Congolese law go well beyond the "*cooperation of the creditor*" that is strictly necessary for the State to be able to pay the debt determined in the judgment, such as providing bank details. Instead, under Congolese law procedures, it is up to the individual to act to force implementation by the State.
1. The Complainant further avers that the State has had ample notice of the alleged violations; first through the Complainant's 2008 Complaint, and then through its proceedings against Sergeant Chance. The courts issued the compensation order in November 2008, and the Registrar notified the Executive of its obligation to pay the amount determined in the judgment on 17 October 2013; the State was thus given ample notice not only of the violations, but also of its own liability.
2. The Complainant indicates that enforcement under these procedures is essentially discretionary, as Congolese law prohibits the seizure of government property, which means that the victim must rely on the goodwill of the government to voluntarily enforce reparation obligations. In support of her arguments on this point, the Complainant cites the Commission's decision in *Bissangou v. Congo*<sup>3</sup>.

<sup>3</sup> Communication 253/02 - Bissangou v. Congo



3. Regarding the requirement that the Communication be submitted within a reasonable time after the exhaustion of local remedies as provided for under Article 56(6), the Complainant submits that such a time limit could only start when it became aware and certain that the Respondent State would not fulfil its obligations and pay the compensation awarded by the Tribunal. The Complainant states that it was only in August 2014 that she became aware with certainty that, despite all efforts, it would not obtain the compensation awarded by the Tribunal, and that the Communication was therefore lodged within a reasonable time.
4. On the requirement of Article 55(7), the Complainant states that the Communication has not been subject to any other procedure.

#### **Respondent State's Arguments on Admissibility**

5. The Respondent State has not submitted its observations on the Admissibility of this Communication despite repeated requests to do so by the Secretariat.

#### **Commission's Analysis on Admissibility**

6. This Communication has been submitted in accordance with Article 55 of the African Charter which mandates the Commission to receive and consider Communications other than those from States Parties. In order to be declared admissible, the said Communications must meet the conditions laid down under Article 56 of the African Charter.
7. From the consideration of the Complainant's submissions, it appears that the requirements listed under paragraphs 1, 2, 3 and 4 of Article 56 of the African Charter are met. The Complaint received by the Commission fulfils the said conditions.
8. The Commission notes the compliance with Article 56(1) of the African Charter by mentioning the identity of the author and her representatives.
9. The Commission finds that the Complaint complies with Article 56(2) of the African Charter by denouncing the violation of specific provisions of the African Charter.
10. The Commission accepts that the Complaint adheres to Article 56(3) of the African Charter in that the Communication does not contain any disparaging or insulting language.





1. The Commission notes that the Complainant's allegations are not based exclusively on information provided by the mass media. It notes that the facts recounted in the Complaint are contained in various reports issued by non-governmental organizations and the United Nations and the annexes to the Communication include, in addition to the Complainant's statement, the official judgment of the OMT of North Kivu, the copy of the letter addressed to the Governor of North Kivu as well as the notification order issued by the Registrar of the OMT. The Commission acknowledges compliance with Article 56(4) of the African Charter.
2. On the requirement of exhaustion of local remedies established by Article 56(5), the Commission, in its jurisprudence, has established that a remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint. The Commission has also established in its jurisprudence that the remedies required to be exhausted before a communication procedure is initiated before the Commission are those ordinary remedies available in the courts and accessible to the individual<sup>4</sup>. In this case, the Commission agrees with the Complainant that the only action the latter could take would be to ensure that the judgment was notified to the State. The Complaint concerns the execution of a judgment handed down on 5 November 2008 in which Sergeant Chance and the State, *in solidum*, were ordered to pay damages. The Commission notes that there is no other judicial remedy available in this case, as recognized in the Commission's jurisprudence, and that the means of enforcement to compel the State to pay damages are administrative in nature and their implementation is discretionary.
3. On the reasonable time requirement under Article 56(6), the Commission is not convinced by the Complainant's argument that she tried to communicate with the Registrar of the Tribunal on several occasions regarding the judgment of 17 November 2008 but without success. However, the Commission notes that the judgment was notified to the executive by the Registrar of the North Kivu OMT only on 17 October 2013. In its jurisprudence, the Commission has accepted in subsequent precedents that the determination of the "reasonable time" to file a Communication must be done on a case-by-case basis, depending on the circumstances of each case<sup>5</sup>. In this case in point, it is reasonable for the Complainant to bring the matter before the Commission only after it has become aware of the State's unwillingness to remedy the damage in accordance with the judgment of which it is duly notified. In the present case, the Commission concludes that the reasonable period of time can be considered to begin to run only after 28 July 2014, the date on which the Complainant referred the matter to the Office of the Governor of the

<sup>4</sup> - Communication 242/01 - Interights, the Institute for Human Rights and Development in Africa, and /'Association mauritanienne des droits de l'Homme v. Mauritania.

- Communication 147/95-149/96 Sir Dawda K. Jawara v. The Gambia

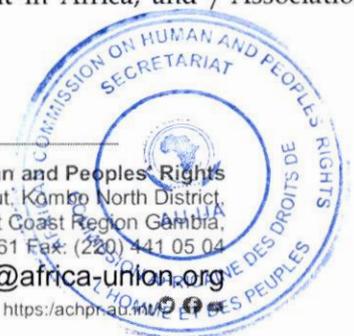
<sup>5</sup> Communication 322/06 - Darfur Relief and Documentation Centre v. Sudan

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Province of North Kivu in order to require the State to fulfil its obligation to pay the compensation awarded to the Complainant by the OMT. In light of this and the date of receipt of the Complaint, the Commission considers that the condition under Article 56(6) of the African Charter has been met.

4. Finally, with regard to Article 56(7), the Commission based itself on the information submitted by the Complainants to find that the Communication did not concern a case that had been settled in accordance with the principles of the United Nations Charter or the Constitutive Act of the African Union, or the African Charter. It therefore concludes that the condition set out under Article 56(7) of the African Charter has been met.

### **Commission's Decision on Admissibility**

5. Based on the foregoing and after analysis of the Complainant's submission, the Commission declares the Communication Admissible.

### **Merits**

#### **Complainant's Arguments on Merits**

6. The Complainant alleges a violation of Articles 1, 2, 5, 7, 14 and 18 (3) of the African Charter, and Articles 2, 4(2)(f), 8, 11 and 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), for which it has submitted the following submissions and arguments on the merits.

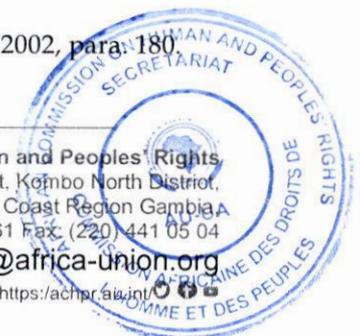
#### **Alleged Violation of Article 5 of the African Charter**

7. The Complainant first refers to the definition of torture under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which the African Commission<sup>6</sup> refers and Article 5 of the African Charter which prohibits all forms of "*physical or mental torture, cruel, inhuman or degrading treatment or punishment*". It adds that the African Commission also relied on the jurisprudence of the European Court of Human Rights (ECtHR)<sup>7</sup>, according to which torture is characterized by "*deliberate inhuman treatment causing severe and cruel suffering*"<sup>8</sup>.

<sup>6</sup> African Commission, Zimbabwe Human Rights NGO Forum v. Zimbabwe, Comm. No. 245/2002, para. 180.

<sup>7</sup> African Commission, Huri Laws v. Nigeria, Comm. No. 225/98, para. 41.

<sup>8</sup> ECtHR, Ireland v. United Kingdom (1978), Appl. No. 5310/71, 18 January 1978, para. 167.





8. The Complainant recalls that the Commission has confirmed that acts of rape and the failure to prevent and respond to acts of rape constitute a violation<sup>9</sup> of the prohibition of torture and other ill-treatment and thus a violation of Article 5. She asserts for example that, in the case of *Fernandez Ortega v. Mexico*<sup>10</sup>, the Inter-American Court of Human Rights (IACtHR) found that the rape of a woman in her home by a soldier constituted an act of torture.
9. On the reference to rape as an act of torture regarding the gravity threshold, the Complainant states that international human rights bodies<sup>11</sup> have explicitly recognized that the physical, psychological and emotional pain and suffering caused by an act of rape is so severe that it constitutes torture.
10. The Complainant further avers that under international criminal law, rape has been recognized as automatically meeting the threshold of torture as it is a crime of a grave and cruel nature, with a devastating impact on victims. According to the Appeals Chamber of the International Criminal Tribunal in the *Kunarac* case, it has been recognized that "certain acts establish by themselves the suffering of those who undergo them. Rape is obviously one of these"<sup>12</sup>.

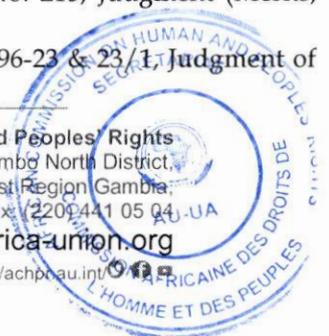
<sup>9</sup> African Commission, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Comm. No. 279/03-296/05, para. 157; *Malawi African Association et al. v. Mauritania*, Comm. No. 54/91, 61/91, 96/93, 98/93, 164/97, 196/97, 210/98, para. 118; see also *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea*, Comm. See also UN Human Rights Committee, General Comment No. 28: Equality of Rights between Men and Women (Article 3), CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 11 (hereinafter 'Human Rights Committee, General Comment No. 28').

See, for example, *Inter-American Commission on Human Rights (IACHR), Raquel Marti de Mejia v. Peru (1996), Case 10.970, Report No. 5/96, Decision of 1 March 1996*; *European Court of Human Rights (ECtHR), Aydin v. Turkey (1997), Appl. No. 57/1996/676/866, 25 September 1997*, in particular para. 83 ("The rape of a detainee by a state agent must be regarded as a particularly serious and odious form of ill-treatment, given the ease with which the aggressor can abuse the victim's vulnerability and frailty. Moreover, rape leaves deep psychological wounds in the victim which do not fade as quickly as other forms of physical and mental violence.") In this case, the ECtHR concludes that even if the only grounds for the complaint had been the act of rape, without the other forms of ill-treatment that the victim had suffered, the ECtHR would still have found that the treatment of the victim (rape) constituted an act of torture, in violation of Article 3 of the European Convention on Human Rights (para. 86)

<sup>10</sup> IACtHR, *Fernandez Ortega v. Mexico*, Series C No. 215, Judgment (Merits, Reparations and Costs) of 30 August 2010, para. 128: "[...] Rape may constitute torture, even if it is based on a single fact and takes place outside of State establishments, such as in the victim's home. This is so because the objective and subjective elements that classify an act as torture refer neither to the accumulation of facts nor to the place where the act is committed, but to the intention, the severity of the suffering, and the purpose of the act, conditions which, in this case, were met.

<sup>11</sup> See, in particular, *Mejia v. Peru (IACtHR, Raquel Marti de Mejia v. Peru (1996), Case 10.970, Report No. 5/96, Decision of 1 March 1996*; *ECHR, Aydin v. Turkey (1997), Req. No. 57/1996/676/866, 25 September 1997.*), *V.L. v. Switzerland (UN Committee against Torture, V.L. v. Switzerland, CAT/C/37/D/262/2005, 20 November 2006, para. 8.10.)* and *Miguel Castro Castro Prison v. Peru (IACtHR, Miguel Castro Castro Prison v. Peru (2006), Series C No. 160, Judgment (Merits, Reparations and Costs), 25 November 2006.)* and *IACtHR, Fernandez Ortega v. Mexico (2010), Series C No. 215, Judgment (Merits, Reparations and Costs) 30 August 2010, para. 124.*

<sup>12</sup> *International Criminal Tribunal for the former Yugoslavia (ICTY), Prosecutor v. Kunarac, IT-96-23 & 23/1, Judgment of the Appeals Chamber, 20 June 2002, paras. 150-151.*





1. The Complainant argues that the recognition of rape as a form of torture plays an important role in recognizing that rape is an intentional act of humiliation, discrimination and intimidation, rather than the natural result of the perpetrators' sexual impulses<sup>13</sup>. She adds that according to the UN Committee against Torture, the criteria of intent and purpose behind an act of torture "do not involve a subjective analysis of the perpetrator's motives and must be determined objectively in light of the circumstances"<sup>14</sup>. It also states that, international criminal tribunals have stated that it is difficult to imagine circumstances (particularly in conflict situations) in which a rape committed by, or at the instigation of, or with the consent of, a state agent could be considered to have a purpose other than to punish, coerce, discriminate or intimidate<sup>15</sup>.
2. The Complainant submits that in addition to the purposes of obtaining information, punishment and intimidation, rape has other purposes, namely the degradation and humiliation of the victim, her family and the community<sup>16</sup> and discrimination based on sex or gender<sup>17</sup>.
3. The Complainant explains that where rape is targeted at a woman because she is a woman, or affects women disproportionately, this has been recognized as a form of discrimination<sup>18</sup>, thus demonstrating a prohibited purpose for the offence of torture. It states that the UN Committee against Torture has recognized that these acts have certainly involved causing severe pain and suffering for impermissible purposes, including interrogation, intimidation, punishment, reprisal, humiliation and gender discrimination. Accordingly, the Committee considers that the sexual abuse committed by the police in this case constitutes torture [...]"<sup>19</sup>.

<sup>13</sup> See Amnesty International, *Rape and Sexual Violence: Human Rights Law and Standards in the International Criminal Court*, March 2011, p. 39, available at: [www.amnesty.org/download/Documents/32000/ior530012011en.pdf](http://www.amnesty.org/download/Documents/32000/ior530012011en.pdf) (hereinafter <<Amnesty International Report >>).

<sup>14</sup> UN Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2/CRP.1/Rev.4, 23 November 2007, para. 9.

<sup>15</sup> ICTY, *Prosecutor v. Delalić*, IT-96-21, Trial Chamber Judgment, 16 November 1998, para. 495.

<sup>16</sup> IACtHR, *Raquel Marti de Mejia v. Peru* (1996), Case 10.970, Report No. 5/96, Decision of 1 March 1996.

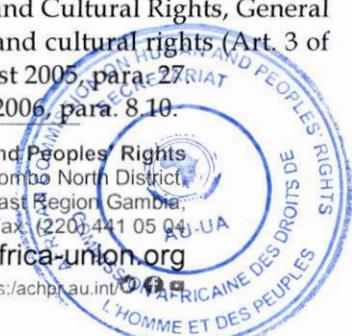
*Ibid*, section V(B)(2).

See, for example, International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para. 687; ICTY, *Prosecutor v. Furundzija*, IT-95-17/1-T, Trial Chamber Judgment, 2 September 1998, para. 687. *Akayesu*, ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para. 687; ICTY, *Prosecutor v. Furundzija*, IT-95-17/1-T, Trial Chamber Judgment, 10 December 1998, para. 162; UN Committee against Torture, *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 20 November 2006, para. 8.10.

<sup>17</sup> 2008 Report of the Special Rapporteur on Torture, para. 30.

<sup>18</sup> CEDAW, General Recommendation No. 19, para. 6; see also, Committee on Economic, Social and Cultural Rights, General Comment No. 16, *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2005/4, 11 August 2005, para. 27.

<sup>19</sup> UN Committee against Torture, *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 20 November 2006, para. 8.10.





4. The Complainant submits that, in relation to this case, the courts of the Respondent State have established that Sergeant Chance, a soldier in the State's armed forces, raped her on 29 October 2008, and that the State is responsible for his actions.
5. The Complainant states that in view of the above, this rape unequivocally constituted an act of torture, automatically meeting the corresponding gravity threshold, and having inherent purposes of intimidation, discrimination, humiliation and degradation.

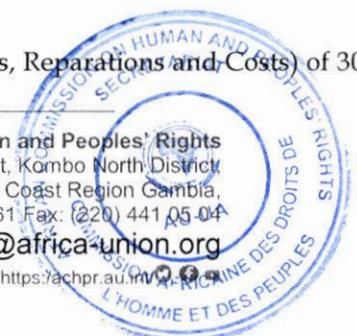
#### **Alleged Violation of the Right to Personal Integrity under Article 4(1) of the Maputo Protocol**

6. The Complainant asserts that her rape constitutes a violation of her right to personal integrity, guaranteed by Article 4(1) of the Maputo Protocol which states that "*Every woman has the right to respect for her life, physical integrity and security of person. All forms of exploitation, punishment and inhuman or degrading treatment shall be prohibited*".
7. The Complainant further indicates that, as discussed above in relation to the violation of Article 5 of the African Charter, the rape of an individual is an extremely serious and paradigmatic violation of their physical and psychological integrity<sup>20</sup>. Indeed, it is such a serious violation of physical integrity that it is considered a form of torture. Therefore, it concludes that there has been a violation of Article 4(1) of the Maputo Protocol in the present case.

#### **Alleged Violation Constituting Gender Discrimination under Article 2 and 18(3) of the African Charter and Article 2 of the Maputo Protocol**

8. The Complainant begins by recalling the provisions of Articles 2 and 18(3) of the African Charter and 2 of the Maputo Protocol, which provide respectively that "*Every person shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter without distinction of any kind, such as... sex*". "*The State shall have the duty to ensure the elimination of all discrimination against women and the protection of the rights of women and the child as provided for in international declarations and conventions*" and "*States (parties) shall combat discrimination against women in all its forms by adopting appropriate legislative, institutional and other measures*".
9. The Complainant states that in developing jurisprudence on the above Articles, the Commission relies on a considerable body of treaties, declarations, case law and other sources that recognize gender-based

<sup>20</sup> See for example, IACtHR, *Fernandez Ortega v. Mexico*, Series C No. 215, Judgment (Merits, Reparations and Costs) of 30 August 2010, para. 128.





violence as a form of discrimination, including the UN Declaration on the Elimination of Violence against Women<sup>21</sup> and more recent decisions<sup>22</sup>.

0. The Complainant adds that, on the interpretation of the above-mentioned texts, the State has an obligation to refrain from any act of violence or ill-treatment that adversely affects the enjoyment of the rights of women as full members of society. It states that this applies in particular to acts of rape, which is recognized as a violation of the prohibition of discrimination<sup>23</sup>.
1. The Complainant asserts that in the case of Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, the African Commission confirmed that it *"shares the view of CEDAW that violence against women affects, impairs or destroys the enjoyment and exercise of human rights and fundamental freedoms by women in different spheres of life. In this regard, the African Commission considers that violence against women is a form of discrimination against them"*<sup>24</sup>.
2. In the present case, the Complainant claims that the actions of the Respondent State's soldier are discriminatory and an affront to her dignity as a female human being.
3. The Complainant describes that under the above Articles, the State has an obligation to respond to gender-based violence, such as rape<sup>25</sup>, which is recognized as a form of discrimination<sup>26</sup>. She adds that the UN Human Rights Committee has further stated that States must ensure "the elimination of obstacles to the equal enjoyment of these rights" and take "positive measures in all aspects to ensure the realization of the potential of women on an equal basis with the rest of the population". She concludes that such an obligation is also contained in Articles 2 and 18(3) of the African Charter and compels States to take the necessary measures to ensure that adequate protection against gender-based violence is put in place.

<sup>21</sup> UN Declaration on the Elimination of Violence against Women, A/RES/48/104/, 20 December 1993, available at [www.un.org/fr/documents/view\\_doc.asp?symbol=A/RES/48/104](http://www.un.org/fr/documents/view_doc.asp?symbol=A/RES/48/104).

<sup>22</sup> Southern African Development Community (SADC), Prevention and Eradication of Violence against Women and Children (Addendum to the SADC Declaration on Gender and Development), 14 September 1998, available at [www.achpr.org/en/instruments/eradication-violence-woman-sadc-addendum](http://www.achpr.org/en/instruments/eradication-violence-woman-sadc-addendum); Economic Community of West African States (ECOWAS), Community Court of Justice, Hadijatou Mani Koraou v. the Republic of Niger, Application No. ECW/CCJ/APP/08/08, Judgment No. ECW/CCJ/JUD/06/08 of 27 October 2008, paras. 62-71 (available at [www.refworld.org/docid/491168d42.html](http://www.refworld.org/docid/491168d42.html)).

<sup>23</sup> See 2008 Report of the Special Rapporteur on Torture; CEDAW, General Recommendation No. 19, para. 9; see for more information the case law cited in the previous section.

<sup>24</sup> African Commission, Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, Comm. No. 323/06, 16 December 2011, para. 165.

<sup>25</sup> See, for example, Human Rights Committee, General Comment No. 28, para. 8; Human Rights Committee, Concluding Observations on Guatemala, CCPR/C/GTM/CO/3, 19 April 2012, para. 19; Human Rights Committee, Concluding Observations on Yemen, CCPR/C/YEM/CO/5, 23 April 2012, para. 9.

<sup>26</sup> CEDAW, General Recommendation No. 19, para. 7.





The victim finally submits that the situation in the Respondent State, as recognized by the African Commission in its Resolution 284, further creates an environment conducive to the commission of rape.

**Alleged violation of the obligation to protect women from gender-based violence in armed conflict under Article 5 of the African Charter and Article 11 of the Maputo Protocol**

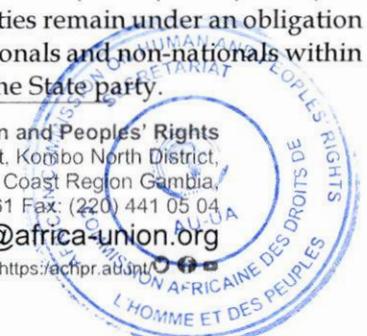
4. The Complainant first recalls the provisions of Article 11 of the Maputo Protocol which states that "1. States [parties] undertake to respect and ensure respect for the rules of international humanitarian law applicable in situations of armed conflict affecting the population, particularly women. 2. States [Parties] shall, in accordance with their obligations under international humanitarian law, protect civilians, including women, irrespective of the population to which they belong, in situations of armed conflict".
5. The Complainant then asserts that it is recognized that "the extent and sustained nature of the armed violence, and the level of organization of the non-State armed group involved in the fighting" means that the situation in the Respondent State, including in 2008, has reached the threshold of an armed conflict, and that international humanitarian law therefore applies<sup>27</sup>. She adds that as a non-international armed conflict, Article 3 common to the 1949 Geneva Conventions and customary international humanitarian law applies to all parties to the conflict, both State and non-State actors<sup>28</sup>. Thus, the core obligations applicable in such a conflict include the prohibition of attacking any civilian not directly participating in hostilities, and the prohibition of rape and torture<sup>29</sup>.
6. The Complainant states that the African Commission has emphasized that, with respect to Article 5 of the African Charter, it applies at all times, including during armed conflict, and that State parties have an obligation to protect civilians in conflict, including against violations of Article 5<sup>30</sup>. She further indicates that the Commission found, for example in *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, that the State's failure to protect women from human

<sup>27</sup> Geneva Academy of International Humanitarian Law and Human Rights, *Rule of Law in Armed Conflicts: Democratic Republic of Congo*; Elizabeth Wilmshurst, *International Law and the Classification of Conflicts*, Oxford University Press, Oxford, 2012, pp. 189-192.

<sup>28</sup> Andrew Clapham, *Human rights obligations of non-State actors in conflict situations*, *International Review of the Red Cross*, Volume 88 No. 863, September 2006, p. 498, available at [www.icrc.org/eng/assets/files/other/irrc\\_863\\_clapham.pdf](http://www.icrc.org/eng/assets/files/other/irrc_863_clapham.pdf).

<sup>29</sup> *Ibid*; see, for more information, International Committee of the Red Cross, *Customary International Humanitarian Law*, Rule 93. Rape and other forms of sexual violence.

<sup>30</sup> See, for example, *African Commission, Amnesty International and Others v. Sudan*, Comm. No. 48/90-50/91-52/91-89/93, para. 42; see also, CEDAW, General Recommendation No. 30, stating at para. 2 that "States parties remain under an obligation to fulfil their obligations in times of conflict or emergency without discrimination between nationals and non-nationals within their territory or in territories under their jurisdiction, even if such territories are not within the State party."





rights violations, such as rape by its armed forces during the conflict in Darfur, constituted, inter alia, a violation of Article 5<sup>31</sup>.

7. The Complainant therefore concludes that the rape she suffered at the hands of the Respondent State's soldier is therefore in breach of the obligation to respect the rules of international humanitarian law, under Article 11(1) of the Maputo Protocol, and to protect civilians, under Article 5 of the African Charter and Article 11(2).

### **Alleged Violation of the Right to Property under Article 14 of the African Charter**

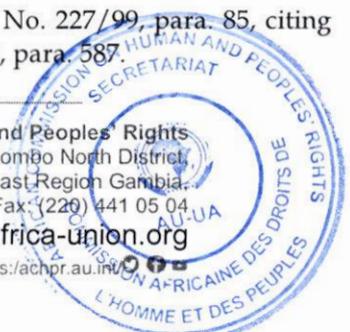
8. The Complainant recalls that Article 14 of the African Charter provides that "*The right to property is guaranteed. It shall not be infringed except by public necessity or in the general interest of the community, in accordance with the provisions of relevant laws*".
9. The Complainant describes that the judgment of 17 October 2008 establishes that Sergeant Chance committed the war crime of looting, by stealing her and her husband's savings, in the amount of \$120, as well as a radio. She states that although the radio was returned during the proceedings, the savings were not.
0. The Complainant affirms that the African Commission has confirmed that Article 14 also applies in times of conflict and that "*the Respondent State has a fundamental obligation and responsibility to provide the conditions and means for the protection of life and property, in times of peace as well as in times of unrest and armed conflict*"<sup>32</sup>. The Commission agreed with the ICTY's Celibici Judgment that "private property must be respected and may not be confiscated [...] [and that] looting is strictly prohibited"<sup>33</sup>.
1. The Complainant explains that the taking of her property cannot be justified as having been in the interest of public necessity or the general interest of the community, nor in accordance with the law, as demonstrated by the criminal judgment convicting Sergeant Chance of the crime of pillage.

### **Alleged Violation of the Right to a Fair Trial under Article 7 of the African Charter and the Right of Access to Justice under Article 8 of the Maputo Protocol**

<sup>31</sup> African Commission, Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, Comm. No.279/03-296/05, para. 168.

<sup>32</sup> African Commission, Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, Comm. No. 279/03-296/05, para. 201.

<sup>33</sup> African Commission, Democratic Republic of Congo v. Burundi, Rwanda, Uganda, Comm. No. 227/99, para. 85, citing ICTY, Prosecutor v. Zejin Delalić et al, Trial Chamber Judgment, IT-96-21-T, 16 November 1998, para. 587.





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2. The Complainant submits that the African Commission and other human rights bodies have established that the non-enforcement of a national court judgment against the State gives rise to a violation of the right to a fair trial. In this regard, it recalls that in the case of *Bissongou v. Congo*<sup>34</sup>, where the Republic of Congo had not paid the compensation awarded by its courts to the Complainant, the African Commission concluded that there had been a violation of Article 7 concerning the right to a fair trial "[...] *the right to be heard guaranteed by Article 7 of the African Charter includes the right to the execution of a judgment. It would indeed be inconceivable that this Article grants the right to bring before national courts any act violating fundamental rights without guaranteeing the enforcement of judicial decisions. To interpret Article 7 otherwise would lead to situations incompatible with the rule of law. Consequently, the enforcement of a final judgment given by any court or tribunal must be considered as an integral part of the right to be heard protected by Article 7*"<sup>35</sup>.
3. The Complainant states that this is an international practice, and in the ECtHR jurisprudence the Court has stated that "*the right of access to a court guaranteed by Article 6 §1 of the Convention would be illusory if the domestic legal order of a Contracting State allowed a final and binding judicial decision to remain inoperative to the detriment of a party. The enforcement of a judgment, by whatever court, must be considered an integral part of the proceedings within the meaning of Article 6*"<sup>36</sup>. She adds that the ECtHR has consistently held that under Article 6 of the European Convention on Human Rights, the execution of a judicial decision must not be unduly hindered, set aside or delayed. With regard to the period of time within which, according to the ECtHR, national authorities must comply with the decisions of their own courts, the ECtHR has consistently determined that the period of enforcement "*should not generally exceed six months from the time when the compensation decision becomes enforceable*"<sup>37</sup>.
4. The Complainant further indicates that the ECtHR jurisprudence holds that "*it is not appropriate to require an individual who has obtained a claim against the State as a result of judicial proceedings to have to subsequently initiate enforcement proceedings in order to obtain satisfaction*"<sup>38</sup>; requiring a person to initiate separate

<sup>34</sup> African Commission, *Bissongou v. Congo*, Comm. No. 253/02.

<sup>35</sup> *Ibid.* Para. 75.

<sup>36</sup> ECtHR [GC], *Scordino v. Italy* (No. 1) (1996), Appl. No. 36813/97, 29 March 2006, para. 196; see also ECHR, *Hornsby v. Greece* (1997), Appl. No. 18357/91, 19 March 1997, para. 40 ff; ECHR, *Metaxas v. Greece* (2004), Appl. No. 8415/02, 27 May 2004, para. 25; ECtHR, *Musci v. Italy* (2006), Appl. No. 64699/01, 29 March 2006, para. 88.

<sup>37</sup> ECtHR, *Cocchiarella v. Italy* (2006), Appli. No. 64886/01, 29 March 2006, para. 89; ECtHR, *Scordino v. Italy* (No. 1) (1996), Appli. No. 36813/97, 29 March 2006, para. 198.

Human Rights Committee, *Sechremelis et al. v. Greece*, Comm. No. 1507/2006, CCPR/C/100/D/1507/2006 (2011), para. 10.4.

<sup>38</sup> ECtHR, *Puleva and Radeva v. Bulgaria* (2012), Appli. No. 36265/05, 14 February 2012, para. 40; EtCHR, *Metaxas v. Greece* (2004), Req. No. 8415/02, 27 May 2004, para. 19; ECtHR, *Burdov v. Russia* (No. 2) (2009), Appli. No. 33509/04, 4 May 2009, para. 68.

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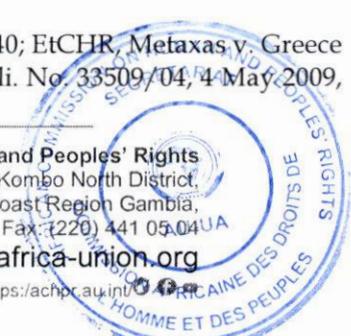
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enforcement proceedings results in a violation of the right to a fair trial<sup>39</sup>. Instead, the Court states that *"it is for the Contracting States to organize their judicial systems in such a way that their competent authorities can discharge their obligations"* to ensure the enforcement of enforceable judgments within a reasonable time<sup>40</sup>.

5. The Complainant also recalls the provisions of Article 8 of the Maputo Protocol, which provides that *"women and men shall enjoy equal rights before the law and shall enjoy the equal protection and benefit of the law. States [Parties] shall take all appropriate measures to ensure (a) the effective access of women to legal and judicial assistance and services [...]"*.
6. The Complainant asserts that in the present case, the non-enforcement of the court's judgment constitutes a violation of her right to a fair trial and hinders her effective access to judicial services, in that access does not lead, for her, to any result. Consequently, she denounces the violation of Article 8 of the Maputo Protocol.

#### **Alleged Violation of the Right to a Remedy under Articles 1, 7 and 5 of the African Charter and Articles 25 and 4(2)(f) of the Maputo Protocol**

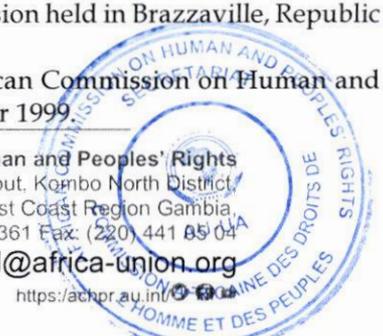
7. The Complainant underscores that the right to an effective remedy is central to Articles 1 and 7 of the African Charter and is explicitly enshrined in Article 25 of the Maputo Protocol. She states that Article 4(2)(f) of the Maputo Protocol also includes a specific obligation for States to *"establish accessible mechanisms and services to ensure information, rehabilitation, and effective compensation for women victims of violence [...]"*.
8. The Complainant adds that the right to a remedy, in turn the right to reparation, and the right to a fair trial was also the subject of a specific resolution<sup>41</sup> adopted by the African Commission. She asserts that the resolution states that *"[...] Everyone whose rights and freedoms have been violated has the right to an effective remedy. This right implies that the individual whose rights have been violated should be able to present his or her claim before a judicial body, which has the competence and powers to pay adequate reparation for the harm suffered, and which shall decide on the claim within a reasonable period of time"*<sup>42</sup>.

<sup>39</sup> Ibid.

<sup>40</sup> ECtHR, *Burdov v. Russia* (No. 2) (2009), Appl. No. 33509/04, 4 May 2009, paras. 68-70, citing ECtHR, *Comingersoll S.A. v. Portugal* [GC], Appl. No. 35382/97, para. 24, ECtHR 2000-IV, and ECtHR, *Frydlender v. France* [GC], Appl.

<sup>41</sup> African Commission, Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, adopted by the African Commission on Human and Peoples' Rights at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, 15-28 November 2007.

<sup>42</sup> Article 1 of the Resolution on the Right to a Remedy and Fair Trial, adopted by the African Commission on Human and Peoples' Rights, meeting at its 26<sup>th</sup> Ordinary Session, held in Kigali, Rwanda, 1-15 November 1999.





9. The Complainant also describes that in the 2002 Robben Island Guidelines Resolution, the African Commission called on States to ensure that the victim of an act of torture, and any dependants, have access to appropriate medical care, the means for social rehabilitation and medical rehabilitation, and adequate compensation and support. She further states that the African Commission also frequently grants reparations to victims whose rights under the African Charter have been violated<sup>43</sup>.
10. The Complainant states that the right to remedy and reparation is also recognized by other international instruments and bodies including CEDAW which, in General Recommendation No. 30, states that "*The Committee reminds States parties that their obligations also require that they provide women with the right to remedy, that is to say, the right to effective and adequate reparation for violations of their rights under the Convention [CEDAW]*"<sup>44</sup>.
1. The Complainant argues that according to the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, the right to an effective remedy includes access to justice, reparation for harm suffered and access to factual information about violations. The Complainant reports in this sense that, as the Committee has recognized, *'if redress is not provided to those whose rights ... have been violated, the obligation to provide an effective remedy ... is not fulfilled'*<sup>45</sup>.
2. The Complainant asserts that the Respondent State was found by its own court to be responsible for Sergeant Chance's actions, and was required to pay her damages. She explains that by failing to do so, the State failed to provide effective remedies for the violations committed against her, as required by Articles 1 and 7, read in conjunction with Articles 5 and 14 of the African Charter, and by Article 25, read in conjunction with Article 4(2)(f) of the Maputo Protocol.
3. The Complainant emphasizes that regional and international human rights bodies recognize that the obligation to provide reparation for serious violations generally requires the award of appropriate

<sup>43</sup> See, for example, African Commission, Amnesty International and Others v. Sudan, Comm. No. 48/90, 50/91, 52/91, 89/93 ; Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme et RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v. Mauritania Comm. Mauritania Comm. Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98; Egyptian Initiative for Personal Rights and Interights v. Egypt, Communication No. 334/06; for an overview of the African Commission's approach and jurisprudence on the right to reparation, see REDRESS, <<Accessing Justice - The Right to Reparation in the African Human Rights System', October 2013, available at [www.redress.org/downloads/publications/1312french-reaching-for-justice-151013-french.pdf](http://www.redress.org/downloads/publications/1312french-reaching-for-justice-151013-french.pdf).

<sup>44</sup> CEDAW, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, para. 79.

<sup>45</sup> Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 29 March 2004, para. 16.





compensation<sup>46</sup>. She adds that while in the present case she focuses on the payment of compensation owed to her by the Respondent State, it is important to emphasize that in the case of serious violations such as those committed in the present case, reparations should also involve restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition such as changes in law and practice<sup>47</sup>.

4. The Complainant argues that according to international jurisprudence, where a State is responsible for a human rights violation, but fails to provide adequate reparation, this failure will constitute a violation per se<sup>48</sup>. She further indicates that in the jurisprudence of the ECtHR, failure to provide adequate reparation constitutes a "procedural" violation of the relevant law. Accordingly, if a State fails to provide compensation for ill-treatment, or provides compensation at a level below what it considers appropriate, States may be found to have committed a "procedural" violation of Article 3 (prohibition of torture and other ill-treatment) of the European Convention on Human Rights<sup>49</sup>. In the same vein, the IACtHR found that the State party was in violation of the right to judicial protection, and of the general obligation in Article 1(1) to respect and ensure rights<sup>50</sup>.
5. The Complainant alleges that the Respondent State has failed to provide an effective remedy, including compensation, by not enforcing the judgment of its own court awarding compensation.

### **Alleged Violation of the Right to Property under Article 14 of the African Charter**

6. The Complainant states that the jurisprudence of the African Commission has established that the failure of a State to pay a compensation award made in a court judgment constitutes in itself a violation of the right to property protected by Article 14 of the African Charter. She explains that in *Bissangou v. Congo*,

<sup>46</sup> Ibid; see, for example, ECtHR, *Kopylov v. Russia* (2010), Appl. No. 3933/04, 29 July 2010, para. 130 (in the case of a violation of Article 3 of the Convention, compensation for the material and moral damage arising from the violation must in principle be available within the range of remedies); see, for further information, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 20; UN Convention against Torture, Article 14; Inter-American Convention to Prevent and Punish Torture, Article 9.

<sup>47</sup> See, for example, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation; CAT, General Comment No. 3, paras. 2, 6-18

<sup>48</sup> Human Rights Committee, *Horvath v. Australia*, Comm. No. 1885/2009, CCPR/C/110/D/1885/2009, 27 March 2014, paras. 8.5 and 8.8.

Ibid, para 8.6.

<sup>49</sup> See, for example, ECtHR, *Kopylov v. Russia* (2010), Appl. No. 3933/04, 29 July 2010, paras. 143-150.

<sup>50</sup> IACtHR, *Acevedo Jaramillo et al. v. Peru*, Series C No. 144, Judgment (Preliminary Objections, Merits, Reparations and Costs) of 7 February 2006, para. 220.

Ibid, para. 278; IACHR, *Access to Justice as a Guarantee of Economic, Social and Cultural Rights: A Study of the Rules Established by the Inter-American System of Human Rights*, Chapter V: The Substance of the Right to Effective Jurisdictional Protection against Violations of Social Rights, 7 September 2007, para. 322.

CAT, General Comment No. 3, para. 38.



drawing on the jurisprudence of the ECtHR under Article 1 of Protocol No. 1 to the European Convention on Human Rights, the African Commission held that "monetary compensation awarded in a judgment which has acquired the authority of *res judicata* must be considered as property. Accordingly, the Respondent State's unmotivated refusal to honor the final judgment in favor of the Complainant impeded the enjoyment of her property<sup>51</sup>.

7. Consequently, the Complainant claims to have been the victim of a violation of Article 14 of the African Charter.

### **Alleged Violation of Article 1 of the African Charter**

8. The Complainant submits that all the violations denounced in this Communication demonstrate the failure of the Respondent State to put in place a system that would allow for the effective enforcement of court-ordered compensation awards in cases involving serious human rights violations for which it is responsible. Thus, it is in violation of Article 1 of the African Charter, which provides that "*Member States of the Organization of African Unity, parties to the present Charter, shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them*".

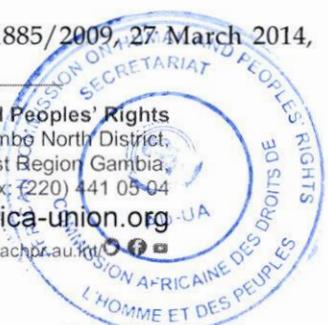
9. The Complainant asserts that the submissions in the Initial Complaint of November 2014 show how the legislative and practical environment in the Respondent State creates almost insurmountable obstacles to the enforcement of judgments including complex procedures, exorbitant fees and corruption resulting in non-payment of many, if not all, of the compensation awards ordered by the courts.

10. The Complainant describes that in order to give effect to the rights to an effective remedy, a fair trial and to property, States must employ all appropriate means and organize their legal systems in such a way as to ensure the enforcement of such court orders<sup>52</sup>. Thus, to avoid recurrence of violations, including under Article 1, the Complainant asserts that the Respondent State should reform its legislation and practices to ensure prompt payment of court-ordered compensation awards against it.

### **Respondent State's Arguments on Merits**

<sup>51</sup> African Commission, *Bissangou v. Congo*, Comm. No. 253/02, para. 76.

<sup>52</sup> Human Rights Committee, *Horvath v. Australia*, Comm. No. 1885/2009, CCPR/C/110/D/1885/2009, 27 March 2014, paras. 8.5 and 8.8.





01. The Commission notes that after the submission of the arguments on the merits of the Communication by the Complainant, these were transmitted to the Respondent State.
02. The Commission notes, moreover, that the State party has not submitted its arguments on the merits of the Communication despite the Secretariat's invitations to do so.
03. Accordingly, and in line with its practice, the Commission will decide on the sole basis of the evidence submitted by the Complainant.

### **Commission's Analysis on Merits**

#### **On the Alleged Violation of Article 5 of the African Charter, Article 4(1) of the Maputo Protocol, Article 2 and 18(3) of the African Charter, Article 2 of the Maputo Protocol, Article 11 of the Maputo Protocol and Article 14 of the African Charter**

04. The Commission recalls the rights guaranteed by the Articles referred to by the Complainant, respectively Article 5 of the African Charter on the prohibition of torture and all cruel, inhuman or degrading treatment or punishment, Article 4(1) of the Maputo Protocol on the right to personal integrity, Articles 2 and 18(3) of the African Charter and Article 2 of the Maputo Protocol on the prohibition of discrimination on the basis of gender, Article 11 of the Maputo Protocol on the obligation to protect women from gender-based violence in armed conflict and Article 14 of the African Charter on the right to property.
05. The Commission notes, in the light of the Complainant's submissions, that in its judgment of 17 November 2008, the Operational Military Tribunal (OMT) of North Kivu in the Respondent State not only recognized and admitted the rape and theft of the radio and the \$120 in savings suffered by the Complainant, but also sentenced Sergeant Shombo Chance to life imprisonment with resignation from his duties in the army and restitution of the savings and the stolen radio.
06. The Commission also notes, in the light of the information in its possession, that the above-mentioned judgment has not been appealed against at the national level and that the decision has therefore become *res judicata*.
07. Noting that the violations of the rights guaranteed in the above-mentioned Articles that are the subject of this Communication have already been acknowledged by the Respondent State, which has begun to make measures to pay compensation, the Commission considers that the Complainant's request that the





Commission recognize its violations is pointless and has been rendered meaningless since the judgment of 17 November 2008.

**Alleged violation of the right to a fair trial under Article 7 of the African Charter and the right of access to justice under Article 8 of the Maputo Protocol on the one hand, and the right to a remedy under Articles 1, 7 and 5 of the African Charter and Articles 25 and 4(2)(f) of the Maputo Protocol, on the other.**

08. The Commission recalls that Article 1 of the African Charter states that "Member States of the Organization of African Unity, parties to the present Charter, recognize the rights, duties and freedoms set forth in this Charter and undertake to adopt legislative or other measures to give effect to them" and Article 7 that "1. Everyone has the right to have his case heard. This right includes: a. the right to take proceedings before the competent national tribunals in respect of any act violating the fundamental rights recognized and guaranteed by the conventions, laws, regulations and customs in force [...]".
09. Article 8 of the Maputo Protocol states that "Women and men shall enjoy equal rights before the law and the right to equal protection and benefit of the law. States shall take all appropriate measures to ensure: a) the effective access of women to legal and judicial assistance and services [...]", article 25 that "States Parties to the present Charter shall promote and ensure, through teaching, education and dissemination, respect for the rights and freedoms set forth in the present Charter, and shall take measures to ensure that these rights and freedoms are understood together with their corresponding duties and obligations. "; and article 4(2) that "States shall take appropriate and effective measures to [...] establish accessible mechanisms and services to ensure information, **rehabilitation and effective compensation** for women victims of violence".
10. The Commission first recalls that the initial and basic obligation of States parties to any international instrument is the establishment of effective measures promoting the full enjoyment of all fundamental rights by all, as contained in article 1 of the African Charter and article 25 of the Maputo Protocol.
11. Secondly, in view of the importance it attaches to the right to a fair trial, as set out in Article 7 of the African Charter, the Commission adopted the Resolution<sup>53</sup> on the procedure relating to the right of appeal and to a fair trial, and the Resolution<sup>54</sup> on the Right to a Fair Trial and Legal Assistance in Africa, in which it described the essence of the right to an effective appeal and the right to a fair trial.

<sup>53</sup> Resolution 4(XI)92 on the procedure relating to the right of appeal and a fair trial adopted at the 11th Ordinary Session held in Tunis from 2 to 9 March 1992.

<sup>54</sup> Resolution 41(XXVI)99 on the Right to a Fair Trial and Legal Assistance in Africa, adopted at the 26th ordinary session held in Kigali from November 1 to 15, 1999.



12. The Commission describes how the combined reading of these Resolutions establishes, on the one hand, that any person whose rights and freedoms are violated is entitled to have his or her case heard within a reasonable time by a competent court and, on the other hand, to receive appropriate redress.
13. With regard to the case in question, the Commission notes that the measures put in place by the Defendant State promote the right of access to justice and the right to a remedy for victims of human rights violations.
14. However, the Commission notes incomplete implementation of the right to an effective remedy as stipulated in Article 7 of the African Charter and Article 4(2)(f) of the Maputo Protocol.
15. Indeed, the Commission considers that by failing to put in place, in the circumstances of this case, the mechanisms and services required to facilitate the enforcement of the TMO's decision, and more specifically the effective compensation of the victim through his receipt of appropriate reparation for the damage she suffered, the Respondent State has failed to comply with the provisions of the aforementioned articles, as well as with the recommendations made to it by Resolution 55.
16. The Commission would also point out that, according to international case law, including that of the ECHR, it is "inappropriate to require an individual who has obtained a claim against the State as a result of legal proceedings to subsequently initiate enforcement proceedings in order to obtain satisfaction"<sup>56</sup>. Thus, requiring a person to initiate separate enforcement proceedings gives rise to a violation of the right to a fair trial<sup>57</sup>. The Court added that, instead, "[i]t is for the Contracting States to organize their judicial systems in such a way that their competent authorities can discharge their obligations" to ensure that enforceable judgments are enforced within a reasonable time<sup>58</sup>.
17. Recalling, moreover, its Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa at their point "P" entitled "VICTIMS OF CRIMINALITY AND ABUSE OF POWER" which stipulates that "(f) Magistrates, prosecutors and lawyers, as appropriate, should respond to the needs of victims : 5) avoiding unnecessary delays in the resolution of cases and in the execution of decisions or

<sup>55</sup> Resolution 111(XXXII)07 on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, adopted at the 42nd Ordinary Session, held in Brazzaville from November 15 to 28, 2007.

<sup>56</sup> CEDH, *Puleva et Radeva c. Bulgarie* (2012), Req. n°36265/05, 14 février 2012, para. 40; CEDH, *Metaxas c. Grèce* (2004), Req. n°8415/02, 27 mai 2004, para. 19; CEDH, *Bourdov c. Russie* (n°2) (2009), Req. n°33509/04, 4 mai 2009, para. 68.

<sup>57</sup> Ibid.

<sup>58</sup> CEDH, *Bourdov c. Russie* (n°2) (2009), Req. n°33509/04, 4 mai 2009, paras. 68-70, citant CEDH, *Comingersoll S.A. c. Portugal* [GC], Req. n°35382/97, para. 24, CEDH 2000-IV, et CEDH, *Frydlender c. France* [GC], Req. n°30979/96, para. 45, CEDH 2000-VII.

CEDH, *Cocchiarella c. Italie* (2006), Req. n°64886/01, 29 mars 2006, para. 89; CEDH, *Scordino c. Italie* (n°1) (1996), Req. n°36813/97, 29 mars 2006, para. 198.



judgments granting reparation to victims", read in conjunction with Article 8 of the Maputo Protocol, the Commission finds that the Respondent State has failed in its obligation to provide effective assistance until effective reparation for the violations suffered by the victim.

18. However, the Commission finds no evidence to suggest that the Respondent State has failed to take any measures to "promote and ensure, through teaching, education and dissemination, respect for the rights and freedoms" protected by the African Charter and the Maputo Protocol.
19. The Commission therefore concludes, in accordance with its jurisprudence<sup>59</sup>, that there has been no violation of article 25 of the Maputo Protocol, and that the Respondent State has violated articles 1 and 7 of the African Charter and articles 4(2)(f) and 8 of the Maputo Protocol.

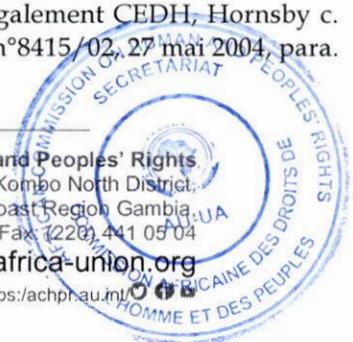
### **On the alleged violation of the right to property under Article 14 of the African Charter**

20. Article 14 of the African Charter provides that "*The right to property shall be guaranteed. It shall not be infringed except by public necessity or in the general interest of the community and in accordance with the provisions of appropriate laws*".
21. The Commission recalls that in *Bissangou v. Congo*, it stated that "Monetary compensation awarded by a judgment which has acquired the authority of *res judicata* must be considered as property. Accordingly, the Respondent State's unmotivated refusal to honor the final judgment in favor of the Complainant impeded the enjoyment of her property"<sup>60</sup>.
22. Thus, the Commission established that the failure of a State to pay compensation awarded by a court decision constitutes a violation of Article 14 of the African Charter and thus of the victim's right to property.

<sup>59</sup> African Commission, *Bissangou v. Congo*, Comm. n°253/02, para 75 "[...] the right to be heard guaranteed by article 7 of the African Charter includes the right to the enforcement of a judgment. Indeed, it would be inconceivable for this article to grant the right to bring before national courts any act violating fundamental rights without guaranteeing the enforcement of judicial decisions. To interpret Article 7 otherwise would lead to situations incompatible with the rule of law. Consequently, the enforcement of a final judgment handed down by any court or tribunal must be considered an integral part of the right to be heard protected by Article 7.».

CEDH [GC], *Scordino c. Italie* (n°1) (1996), Req. n°36813/97, 29 mars 2006, para. 196 ; voir également CEDH, *Hornsby c. Grèce* (1997), Req. n°18357/91, 19 mars 1997, para. 40 ff ; CEDH, *Metaxas c. Grèce* (2004), Req. n°8415/02, 27 mai 2004, para. 25 ; CEDH, *Musci c. Italie* (2006), Req. n°64699/01, 29 mars 2006, para. 88

<sup>60</sup> African Commission, *Bissangou v. Congo*, Comm. No. 253/02, para. 76.





23. Noting in the present case that the Respondent State has not paid the victim the damages decided and awarded by judgment, the Commission concludes that this non-enforcement infringes the victim's right to property.

24. Consequently, the Commission finds a violation of Article 14 of the African Charter.

### **On the Alleged Violation of Article 1 of the African Charter**

25. The Commission recalls that Article 1 of the African Charter provides that "*Member States of the Organization of African Unity, parties to the present Charter, shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them*".

26. The Commission notes, in light of the information provided by the Complainant in this Communication, that the mechanisms established by the State Party for the enforcement of court decisions and payment of compensation to victims are not favorable to the latter and do not facilitate their prompt entry into and enjoyment of their rights.

27. In view of the foregoing, the Commission concludes that the Respondent State has failed in its duty to put in place legislative or other measures conducive to the implementation of the rights, duties and freedoms guaranteed by the African Charter.

28. The Commission therefore recognizes the violation of Article 1 of the African Charter.

### **On the Reparations Requested**

#### **On the enforcement of the OMT judgment by the payment of compensation in the amount of \$10,000 decided by the OMT judgment**

29. Reparation for harm suffered as a result of human rights violations is an obligation under international law. This obligation, which is enshrined in the various international human rights instruments, requires the State to prosecute the perpetrator of the violations and then any perpetrator other than the State to make reparation for the harm suffered by the victim or his/her survivors. In other words, by ratifying international instruments, States undertake the duty to create the conditions for the enforcement of the right to reparation to victims.

30. At the African regional level, the normative source of the right to reparation is General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Reparation for Victims of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Comment No. 4) of the



Commission while at the international level it is the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>61</sup> and General Comment No. 3 of the Committee against Torture that are in force.

31. These instruments establish the framework and principles for reparation to be granted to victims of human rights violations. Reparation for a human rights violation thus includes the principles of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition<sup>62</sup>.
32. In relation to the principle of compensation, the Commission's General Comment No. 4 provides that "*compensation awarded to the victim should be fair, adequate and proportionate to the harm suffered, whether material, non-material or otherwise*". It follows from this principle that the effective enforcement of compensation is one of the conditions for the realization of reparation and the promotion of justice. As recognized by the African Court in *Zongo v. Burkina Faso*<sup>63</sup>, damages are a means of compensating for moral prejudice suffered such as "suffering, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation and damage to reputation caused by the violation"<sup>64</sup>.
33. In the present case, the Commission notes that in recognition of and compensation for the damage suffered, the Respondent State Court, in the OMT judgment of 17 November 2008, jointly ordered the perpetrators (Sergeant Shombo Chance and the Respondent State) to pay compensation. The Commission notes that the Respondent State Court fixed the victim's compensation at \$10,000.
34. Without pronouncing on the amount of compensation, which it leaves to the discretion of the national courts according to positive law, following its practice, the Commission notes, nevertheless, that the condemnation of the national courts to the payment of damages constitutes a predisposition of the Respondent State and its institutions to compensate for the damage suffered.
35. The Commission notes, however, that until its seizure in 2014, the perpetrators recognized to pay compensation to the victim<sup>65</sup> were slow to fulfil their obligation.

<sup>61</sup> Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law | OHCHR

<sup>62</sup> *Urta Guridi v. Spain* (CAT 212/02).

<sup>63</sup> *Zongo v. Burkina Faso*, supra note 1, at paras. 27, 55-56, 111(i)-(ii), COMPARATIVE STUDY ON THE LAW AND PRACTICE OF REMEDIES FOR HUMAN RIGHTS VIOLATIONS.

<sup>64</sup> COMPARATIVE STUDY ON THE LAW AND PRACTICE OF REMEDIES FOR HUMAN RIGHTS VIOLATIONS, p. 72.

<sup>65</sup> *Gäfgen v. Germany* [GC], 2010, § 116, and *Razzakov v. Russia*, 2015, § 50.

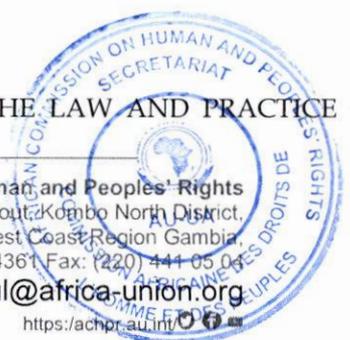


36. The Commission recalls that, as stated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the right of victims includes "adequate, effective and prompt reparation (...) for violations found".
37. Therefore, in the present Communication, the Commission recognizes the Complainant's right to effective redress and more specifically her right to compensation in the amount of \$10,000 decided by the OMT judgment and considers that this claim is well-founded.

**On the Enforcement of the OMT Judgment through the Restitution of the \$120 decided by the OMT judgment**

38. The Commission recalls the content of the obligation to compensate for damages suffered and its constituent principles listed above.
39. The Commission also recalls its General Comment No. 4 which states that "*Restitutionary measures should, taking into account the specificities of each case, seek to restore the situation that existed before the violation was committed (...)*".
40. The Commission notes from the submissions that the Complainant was the victim of theft of her savings and those of her family in the amount of \$120. The Commission also notes that the restitution of the stolen savings was ordered by the judgment in question; and notes, however, that the stolen savings were not actually returned until the submission of the present Communication to the Commission.
41. Recalling the case of *Mbiankeu v. Cameroon*<sup>66</sup> in which the African Court noted that "loss of property may be remedied by (...), including the return of the original property, the provision of property of a similar nature, or compensation in the amount of the repurchase value of the property", the Commission, supporting international jurisprudence, confirms the obligation of restitution on recognized perpetrators of human rights violations.
42. In light of the above, the Commission accepts the legitimacy of the prayer to return the savings of \$120 to the victim and her family and grants her prayer.

<sup>66</sup> *Mbiankeu v. Cameroon*, supra note 8 at para. 132, COMPARATIVE STUDY ON THE LAW AND PRACTICE OF REMEDIES FOR HUMAN RIGHTS VIOLATIONS at 67.



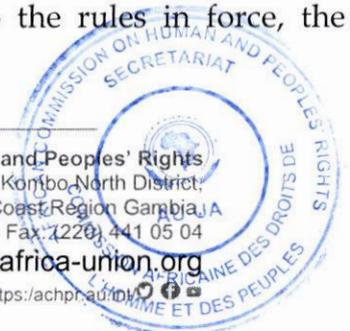


**On the Payment of Interest on the above amounts at the rate of 6% from the date of the OMT judgment**

43. As previously recognized, the failure of the State Party to pay damages constitutes a violation of the victim's right to property as recognized in Article 14 of the African Charter.
44. In the present case, the Complainant claims interest at the rate of 6% on the unpaid amounts since the date of the OMT judgment.
45. As there is no applicable regulation on statutory interest rates for unenforced judgments, the Commission refers to the regulation in force in the Respondent State.
46. The Commission notes that Article 152 of the Code of Civil Procedure of the Democratic Republic of Congo provides that "*A proportional duty of 6% shall be payable on any sum or property value awarded by a judgment that has become res judicata, by an arbitration award or by a foreign judgment that has become enforceable*".
47. In view of the domestic jurisdiction of the State Party on the one hand, and in view of the fact that the conditions for the payment of legal interest in the case in question have been met, on the other, the Commission recognizes the admissibility of the Complainant's prayer and accepts the need to pay the victim interest on the above-mentioned amounts at the rate of 6% from the date of the OMT judgment.

**On the Enforcement of the Sentence Imposed on Sergeant Chance by the OMT Judgment**

48. One of the objectives of the international protection of human rights is the recognition of the injustice suffered by the victim as a result of the commission of the act condemned and the need to restore this social justice by, among other things, punishing the perpetrator.
49. Therefore, the effective execution of the sanction by the perpetrator is of indisputable importance and represents a source of appeasement for the victim, who would see it as a consideration of her person and her cause.
50. Furthermore, by recognizing in General Comment No. 4 (Paragraphs 27&28) the possibility for States Parties to prosecute and extradite perpetrators of torture and the prohibition of amnesty for such perpetrators, the Commission advocated the need to punish, according to the rules in force, the recognized perpetrator of human rights violations.





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51. In the present case, the Complainant submits that although Sergeant Chance was convicted by the OMT, she had not, up to the date of submission of her Complaint, received any assurance that the convicted perpetrator would serve the sentence, i.e., life imprisonment and resignation from the army. She indicates that this situation motivates her claim to the execution of the sentence pronounced against Sergeant Chance by the OMT judgment.
52. Considering on the one hand that international law recommends the prosecution of the perpetrator of the human rights violation, recalling the Commission's General Comment No. 4, which states that the obligation of satisfaction includes "the right to the truth, (...) an official statement or court order restoring the dignity, reputation and rights of the victim and those closely linked to him or her; judicial and administrative sanctions against those responsible for the violations; a public apology, including acknowledgement of the facts and acceptance of responsibility (...)", and recalling further that in the case of *S.L. v. Bulgaria*, the Committee on the Elimination of Discrimination against Women observed that failure to investigate, prosecute or punish perpetrators, coupled with failure to provide redress to victims and survivors, constitutes a tacit authorization or encouragement to perpetrate gender-based violence, as such failure is detrimental to society and, in particular, to women and children<sup>67</sup>, the Commission recognizes that the prosecution of Sergeant Chance and the effective execution of his sentence is one of the essential conditions for the reparation of the harm suffered.
53. Accordingly, the Commission finds that the Complainant's request for the execution of the sentence by Sergeant Chance is legitimate, which would also be a reaffirmation of the effectiveness of human rights protection in the State Party.

### **On the Establishment of Legislative and Institutional Measures for the Enforcement of Judicial Decisions and Guarantees of Non-Repetition of Violations**

54. The guarantees of non-repetition established both by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and by the Commission's General Comment No. 4 provide that "*States Parties must take measures to combat impunity for violations committed. These measures include (I) establishing effective and clear instructions to public officials, including law enforcement officials, (...), (VI) reviewing and revising laws, (...), promoting compliance with international standards and codes of conduct by public officials, including law enforcement officials, (...)*". The above-mentioned General Comment states that the objective of guarantees of non-repetition is to eliminate the structural causes of violence in society, which are often conducive to an environment in which acts of human rights violations occur.

<sup>67</sup> JURISPRUDENCE NOTE 2019, Overview of the jurisprudence of the United Nations treaty bodies P. 17.

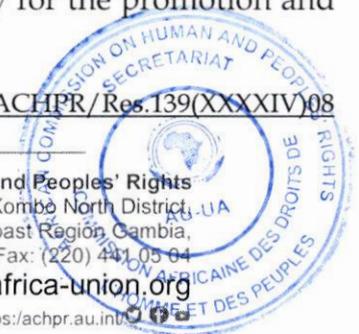


55. In the present case, the Complainant requests the Respondent State, through the Commission, to put in place guarantees of non-repetition of violations, including legislative and institutional measures to enforce court decisions.
56. Recalling its Resolution ACHPR/Res.139(XXXXIV)08 on the Human Rights Situation in the Democratic Republic of Congo (DRC)<sup>68</sup> in which it condemned the actions of the State Party and called on all stakeholders to adopt measures to put an end to the serious violations of human rights, the Commission considers that the victim's request is legitimate and consistent with her right to reparation.

### **Decision of the African Commission on Human and Peoples' Rights on Merits**

57. In view of the above, the African Commission on Human and Peoples' Rights:
- a. Declares that the Democratic Republic of Congo has violated articles 1, 7 and 14 of the African Charter and articles 4 (2)(f) and 8 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) in the present case;
  - b. Declares that the Democratic Republic of the Congo has not violated article 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol);
  - c. Notes that the final decision handed down by the Congolese courts has recognized the violation of article 5 of the African Charter, article 4 (1) of the Maputo Protocol, articles 2 and 18 (3) of the African Charter, article 2 of the Maputo Protocol, article 11 of the Maputo Protocol and article 14 of the African Charter;
  - d. Calls on the Respondent State to take the necessary measures for the effective execution of its OMT judgment, namely:
    - i. Life imprisonment and the resignation of Sergeant Shombo Chance from his duties in the army and to inform the Complainant;
    - ii. Payment of the \$120 savings;
    - iii. Payment of damages of \$10.000;
  - e. Requests the Respondent State to:
    - ii. Pay interest at the rate of 6% on the amounts ordered by the OMT judgment;
    - iii. Put in place measures to guarantee the non-repetition of violations, starting with the establishment of the legislative and institutional framework necessary for the promotion and

<sup>68</sup> Resolution on the Situation of Human Rights in the Democratic Republic of Congo (DRC) - ACHPR/Res.139(XXXXIV)08  
African Commission on Human and Peoples' Rights (au.int).





protection of human rights and the execution of judicial decisions in the State Party, including the establishment of a compensation fund;

- iv. Report in writing, within one hundred and eighty (180) days of the notification of this decision, on the measures taken to implement these recommendations.

**Done during the 76<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held virtually from 19 July to 02 August 2023**

