



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

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

In the Matter of

**THE GLOBAL JUSTICE & RESEARCH PROJECT & 3 ORS V.
THE REPUBLIC OF LIBERIA**

Application No: ECW/CCJ/APP/48/22, Ruling No: ECW/CCJ/ RUL/ 04 /24

RULING

ABUJA

17 October 2024

1. THE GLOBAL JUSTICE & RESEARCH PROJECT

2. CHARLES SUNWABE

3. DOROTHY SUNWABE-VOKER

- APPLICANTS

4. NELAY T. SUNWABE

V.

THE REPUBLIC OF LIBERIA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon Justice Edward Amoako Asante

-Presiding

Hon. Justice Gberi-Be Ouattara

-Member

Hon. Justice Dupe Atoki

-Member/Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar

REPRESENTATION OF PARTIES:

Edmund Foley, Esq.

-Counsel for Applicants

Cllr. Adolphus S. Karnuah

-Counsel for Respondent



RULING:

This is the ruling of the Court read virtually in open Court pursuant to Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

I. DESCRIPTION OF PARTIES

1. The 1st Applicant, Global Justice & Research Project (“GJRP”) is a non-profit, non-governmental organization incorporated in Liberia and based in Monrovia. The GJRP documents conflict-related crimes in Liberia and, where possible, seeks justice for victims of those crimes.
2. The 2nd Applicant is a dual citizen of Liberia and the United States of America and a survivor of the massacre of civilians at St. Peter’s Lutheran Church in 1990.
3. The 3rd Applicant is also a dual citizen of Liberia and the United States of America, residing in New Jersey. She presented herself as a victim of the St. Peter’s Lutheran Church massacre that occurred between 29th and 30th July 1990.
4. The 4th Applicant is a dual citizen of Liberia and the United States of America and a survivor of the massacre of civilians at St. Peter’s Lutheran Church in 1990.
5. The Respondent is the Republic of Liberia, a signatory to the ECOWAS Treaty thus a Member State of the ECOWAS

II. SUBJECT MATTER OF PROCEEDINGS

6. The present application finds basis on an allegation by the Applicants that the Respondent has failed in its obligations under the African Charter on Human and Peoples’ Rights and various international human rights treaties to investigate and, where appropriate, prosecute serious violations of international human rights and humanitarian law, arising from the St. Peters Lutheran Church Massacre of 1990, in order to provide redress to the victims.





7. The Applicants have filed this application for themselves and on behalf of members of their family who were victims of the massacre at St. Peter's Lutheran Church in Monrovia, Liberia, on 29 and 30 July 1990.

III. PROCEDURE BEFORE THE COURT

- i. Initiating Application, dated 29 September 2022 and served on 05 October 2022 electronically.
- ii. Respondent's Application for extension of time, dated 09 November 2022 and served on 09 November 2022.
- iii. Respondent's Defence, dated 09 January 2023 and served electronically on 12 January 2023
- iv. Applicants' motion on notice for an order to include statements on oath, dated 16 December 2022 and served on 12 January 2023 electronically
- v. Respondent's Defence dated 10 February 2023 served electronically on 13 February 2023.
- vi. Applicant's motion on notice for examination of witness dated 15 March 2023 and served on same date electronically.
- vii. Applicants' reply dated 13 March 2023 and served on 22 March 2023 electronically.
- viii. Respondent's motion to dismiss Applicants' application for the enforcement of fundamental human rights, dated 27 June 2024 and served electronically on 28 June 2024.

IV. APPLICANTS' CASE

a) Summary of facts

8. The facts of this case is premised on the events that occurred during the first and second civil wars in Liberia where over 600 civilians who sought for shelter at the St. Peters Lutheran Church were massacred. The Applicants allege that these massacres were perpetrated by the Armed Forces of Liberia.

9. That following the occurrence of this tragic event, the Respondent has failed, refused, and or neglected to investigate the massacre and bring perpetrators to book. The Applicant states further that although a Truth and Reconciliation Commission was established to look into the matter, the



recommendations of the said Commission which included the need for investigations with a view to bringing the perpetrators to book by establishing a War Crimes Court has not been implemented.

10. According to the Applicants, having gone through the House of Representatives of the Respondent State, the request for the establishment of the War Crimes Court was overturned on grounds that it was not priority.

11. The Truth and Reconciliation Commission condemned the dastard act and attributed it to the Armed forces of Liberia having gathered that the said massacre was targeted at the Mano and Gio ethnic groups of Liberia.

12. That in failing to deliver justice to the victims of the Lutheran Church massacre, the Respondent is in ongoing violation of its obligations under the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, and International Humanitarian Law.

13. The Applicants state specifically that the Respondent is failing in its obligations to effectively investigate and prosecute violations of the rights to life, freedom from torture, and freedom from war crimes that occurred during the Lutheran Church Massacre and provide an effective judicial remedy to the Massacre's victims.

b) Pleas in Law

14. The Applicants rely on the following laws:

- i. Article 33 of the Rules of Procedure of the Court of Justice.
- ii. Articles 9(4) and 10(d) of Protocol A/P. 1/7/91 (as Amended by Supplementary Protocol A/SP.1/01/05) to the Revised Treaty of ECOWAS).
- iii. Articles 1, 4, 5, and 7(1) of the African Charter on Human and Peoples' Rights (the "ACHPR").
- iv. Articles 2(3), 6, and 7 of the International Covenant on Civil and Political Rights (the "ICCPR").
- v. Articles 2, 7, and 12 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "CAT"); and

vi. Articles 3 and 146 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the “Fourth Geneva Convention”) and its Protocol Additional Relating to the Protection of Victims of Non-International Armed Conflicts (“Additional Protocol II”), as well as customary international humanitarian law.

c) Reliefs Sought.

- a. A declaration that Liberia has violated Articles 1, 4, 5, and 7(1) of the ACHPR; Articles 2(3), 6, and 7 of the ICCPR; Articles 2, 7, and 12 of the CAT; and Articles 3 and 146 of the Fourth Geneva Convention, and customary international humanitarian law.
- b. An order for Liberia to cease and remedy its violations by immediately conducting official, effective, independent investigations into the Lutheran Church Massacre to identify those responsible, prosecuting those responsible for the Massacre for violations of domestic and international law.
- c. To compensate Mr. Sunwabe, Ms. Sunwabe-Voker, and Ms. Sunwabe US\$1,500,000 (one million five-hundred thousand US dollars) for the loss of approximately 16 family members and the Government’s subsequent failure to investigate the killings.
- d. To provide just and adequate compensation to all other victims of the Massacre and their families, including for moral damage.
- e. To take steps to memorialize the Massacre’s victims; and
- f. To direct an apology to the Massacre’s victims for its violations.
- g. To order Liberia to pay the Applicants’ reasonable attorneys’ costs and fees; and
- h. To order any other such relief as the Court may deem just and appropriate

V. RESPONDENT’S CASE

a). Summary of Facts

15. The Respondent, the Republic of Liberia raised a preliminary objection challenging the jurisdiction of the Court to entertain the application instituted by the Applicants. The arguments canvassed by the Respondent



is that the infamous Lutheran Church Massacre occurred on July 29, 1990, about 32 years after the Applicants filed this action and therefore in line with the principle of non-retroactivity of Conventions, this Court lacks jurisdiction to hear the case.

16. To this extent, the Respondent urged the Court to dismiss the Applicants' application in its entirety on grounds stated hereunder:

- i. That this Court lacks jurisdiction to hear the matter.
- ii. That the period in which the Applicant could institute a suit before this Honorable Court for this cause has elapsed.
- iii. The inadmissibility of the application due to the lack of *locus standi* on the part of the Applicants.

b). Reliefs Sought.

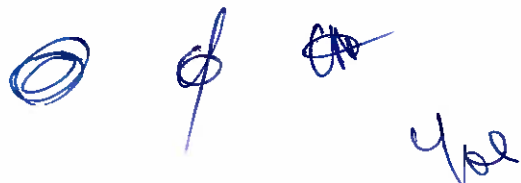
17. Sequel to the objections aforementioned, Respondent seeks the following reliefs:

- a) That the application submitted by the Applicants be dismissed in line with Article 88 of the Rules of Procedure of the Court.
- b) Award all costs against the Applicants and grant the Respondent any and all other rights and privileges deemed just and equitable under the circumstances.

VI. APPLICANTS REPLY

18. In its reply to the preliminary objection, Applicants maintained that the violations by the Respondent are continuing and therefore fall squarely within the temporal jurisdiction of this Court, and that the Protocol's limitations period does not apply.

19. Applicants further state that their case arises out of violations committed by a Member State, which is sufficient to establish the Court's personal jurisdiction and that they have the requisite standing having demonstrated personal injury resulting from the Respondent's failure to investigate and prosecute those responsible for the massacre or to provide them access to a remedy.



VII. JURISDICTION

Preliminary Objection

20. The Respondent in their defense raised a preliminary objection on the jurisdiction of the Court for which the Court has distilled two core issues for determination. These issues as outlined hereunder will be addressed seriatim.
- a. Whether the case of the Applicants is caught up by the statute of limitation under the Rules of Court.
 - b. In view of the fact that the massacre predates the establishment of the Court, Whether the obligation to investigate and prosecute under Article 1 of the African Charter on Human and Peoples' Rights (ACHPR) is continuous to grant the jurisdiction of the Court.

On whether the Application is statute barred

21. The objection raised by the Respondent on this head is that the Application initiated by the Applicants is statute barred and should be dismissed having not been brought in compliance with Article 9 (3) of the Supplementary Protocol on the Court which prescribed that an application for the violation of human rights must be filed not later than three years after the alleged violation. They stated that the massacre in question took place between 29th and 30th July 1990, while the Applicants filed their application on the 29th September 2022 which is 32 years after the Lutheran Church massacre, and 19 years after the civil war in Liberia was declared over.
22. The Applicants on the other hand maintain that the claims of the Respondent in this regard fails as limitations period does not apply in actions for enforcement of fundamental rights against Member States. Furthermore, they state that their case is centered on gross violations of the duty to investigate and prosecute violations of the rights to life, freedom from torture, and of the duty to provide adequate remedy to victims. That even if the limitations period did apply, the continuing nature of the Respondent's violations negates the argument that their case is statute barred.

Analysis of the Court.

23. The notion of statute of limitation refers to the law that sets maximum time period within which legal proceedings must be initiated after an alleged violation occurs. To this effect, Article 9 (3) of the Supplementary Protocol of 2005 provides: *“Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.”*
24. With respect to the above provision, the Court has since clarified the inconsistencies between the French and English versions of the text and establish the current jurisprudence which precludes any actions alleging violation of human rights against Member States from being subjected to time limitation. FEDERATION OF AFRICAN JOURNALISTS V THE REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 @ pg. 20. MATTHEW ISABU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/41/22 @ pg. 11 para 38, SIMEON BABANI SEIDU ABU & 2 ORS v. FEDERAL REPUBLIC OF NIGERIA. ECW/CCJ/JUD/29/22 @ para. 65.
25. In the light of the foregoing and in line with its current jurisprudence, the Court reaffirms that in matters of human rights violation, an Applicant cannot be barred by reason of effluxion of time. The Court so holds.

On the allegation of the massacre predating the existence of the Court.

26. The objection of the Respondent under this head is that the alleged massacre that occurred in 1990 at the Lutheran Church predates the human rights jurisdiction of the Court which was granted in 2005 sequel to the Supplementary Protocol A/SP.1/01/05. As such, the Court is devoid of jurisdiction in the instant case. They argue that since the Lutheran Church massacre occurred in 1990, 15 years before the Court was conferred with individual human rights jurisdiction in 2005, and about 32 years after which the Applicants filed this action, the Court in line with the principle of non-retroactivity lacks jurisdiction to hear the application.
27. The Applicants on the other hand argue that the Respondent mischaracterizes their case by arguing that the Court does not have temporal jurisdiction over the Lutheran Church massacre. They emphasize that their case concerns the Respondent’s ongoing failure to investigate and prosecute those responsible for the massacre and provide access to justice



to the massacre's victims, and not on any acts or omissions attributable to the State arising out of the massacre itself.

Analysis of the Court

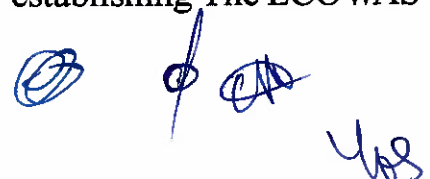
28. In determining the jurisdiction of the Court in the instant case as it concerns the retroactivity of the application of the enabling instruments, it is instructive to state that human rights treaties bind parties after they ratify an instrument, and it enters into force. In principle therefore, only their conduct after that date is constrained by the treaty. Thus, a Member State is bound to implement the provisions of only international human rights instruments to which it is a signatory to. REGISTERED TRUSTEES OF EMPOWERMENT OF UNEMPLOYED YOUTHS' INITIATIVE V FEDERAL REPUBLIC OF NIGERIA & 2 ORS ECW/CCJ/JUD/37/22 @ pg. 38 para 130.
29. Conversely, a State cannot be compelled to implement the provisions of an instrument it has not signed. Consequently, an attempt to compel a retroactive implementation of such instrument cannot stand. This was adequately captured by the provision of Article 28 of the Vienna Convention on the Law of Treaties: "*Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party*".
30. The above position was very well articulated by the United Nations Human Rights Committee when it declared in relation to its jurisdiction *ratione temporis* that the Covenant and the Optional Protocol cannot be applied retroactively, and that the Committee is precluded from examining alleged violations that occurred prior to the entry into force of the Covenant and Protocol for the State party concerned. S. E. V. ARGENTINA COMMUNICATION NO. 275/1988 A/ 26 MARCH 1990 PG. 5.2-5.3
31. In essence, the application of the principle of non-retroactivity is paramount in determining the jurisdiction of Courts in relation to the international human rights instruments ratified by Member States. WAOMEDE TETevi KOKOU & ANOR V TOGOLESE REPUBLIC ECW/CCJ/JUD/05/23 PG 11-14.

32. In the determination of the application of the principle of non-retroactivity of international instruments raised by the Respondent, it is imperative to give a historical narration of the establishment of this Court. In that regards it is worthy to note that the Community Court of Justice ECOWAS was established under Articles 6 and 15 of the ECOWAS Revised Treaty of 1993. It is further relevant to note that the Court did not come into existence until 1991 when the 1991 Protocol A/P1/7/91 was signed by all the Member States of the ECOWAS.

33. The Court recalls that the alleged massacre at the Lutheran Church occurred in 1990 which predated the establishment of the Court in 1991. In this wise, the relevant date therefore for the purpose of establishing jurisdiction by reason of time is, in principle, the date of entry into force of the 1991 Protocol A/P1/7/91. It is on record that this Protocol was signed by all Member States of the ECOWAS including the Respondent on the 6th day of July 1991. The Court therefore aligns with the objection of the Respondent based on the fact that the alleged Lutheran Church Massacre predated the existence of the ECOWAS Court of Justice.

34. It is important in this case to proceed further in addressing the issue of non-retroactivity raised considering that whereas the Court in principle came into existence in 1991, access was not available to individuals for the enforcement of the violation of their human rights until 2005 when the Supplementary Protocol on the Court A/SP.1/01/05 was signed effectively granting the human rights mandate to the Court. Specifically, Article 9 (4) of the said Supplementary Protocol of 2005 provides that *"The Court has jurisdiction to determine cases of human rights violation that occur in any member state"*.

35. Considering that the instant matter is premised on human rights violations, an analysis of the date of grant of human rights mandate to the Court is equally imperative in the consideration of the jurisdiction of the Court. In that regard, the import of the Supplementary Protocol of 2005 is to create a complaints mechanism whereby all Member States parties to the Revised Treaty of ECOWAS reaffirm their commitment to the said texts within the framework of the ECOWAS. Consequently, by establishing The ECOWAS



Court of Justice, they have upon appending their signatures acceded to create a mechanism for guaranteeing and protecting human rights within the framework of the ECOWAS so as to implement the human rights contained in the text and other international instruments, they are signatory to. SERAP V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/12 PG. 358.

36. In that regard, the well-established principle of law that State Parties are bound by the instruments to which they are signatory is also applicable in relation to the Human Rights Enforcement Mechanisms, such instruments include importantly the said Supplementary Protocol of the Court A/SP.1/01/05.
37. Consequently, in computing the critical date of enforcement of a treaty, the guiding rule is that if the human rights treaty has a complaint mechanism, the date of the mechanism's entry into force for a particular country creates the 'critical date'. In principle, the mechanism would only examine complaints concerning State actions after that date. SERAP V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/12 *supra*. INCORPORATED TRUSTEES OF MEDIA RIGHTS V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/70/21 @ PG. 17, WAOMEDE TETevi KOKOU & ANOR V TOGOLESE REPUBLIC *Supra*
38. Thus, the 'critical date in determining the enforcement of the Supplementary Protocol A/SP.1/01/05 is the 19th of January 2005 when it attained the necessary signature. In that regards, the objection of the Respondent that the alleged massacre that occurred in 1990 at the Lutheran Church predates the human rights jurisdiction of the Court finds credence in a plethora of decisions of the Court where it affirmed the principle of non- retroactivity and found that the 2005 Supplementary Protocol, while conferring jurisdiction on the Court of Justice in matters of human rights, did not establish any possibility of its retroactive application. Hence, following the principle of non-retroactivity of the Treaties, arising from Article 28 of the Vienna Convention on the Law of Treaties (*supra*), the jurisdiction of this Court in matters of human rights is limited to facts that occurred after January 19, 2005, the date of its provisional entry into force. MADON FIDEGNON FREDERIC V. STATE OF TOGO ECW/CCJ/JUD/21/22 @ PG. 24 para 131-132, ALHAJI HAMMANI TIDJANI v.

39. Additionally, the Court finds relevance in the jurisprudence of the Inter-American Court which supports its opinion when it held that: *“In order to determine if the Court has jurisdiction to hear the case or aspects of it, pursuant to Article 62(1) of the American Convention, the Court must take into consideration the date of the State’s recognition of the jurisdiction, in the terms that it occurred and the principle of non-retroactivity enshrined in Article 28 of the Vienna Convention on the Law of Treaties of 1969. Brazil recognized the contentious jurisdiction of the Inter-American Court on December 10, 1998, and in its declaration, it noted that the Court would have jurisdiction regarding “facts subsequent” to said recognition. Based on the aforementioned and the principle of non-retroactivity, the Court cannot exercise its jurisdiction to apply the Convention and rule a violation of its norms when the alleged facts or conduct of the State, that may implicate its international responsibility, are prior to the recognition of jurisdiction.”* THE CASE OF GOMES LUND ET AL. (“GUERRILHA DO ARAGUAIA”) V. BRAZIL JUDGMENT OF NOVEMBER 24, 2010, PG. 15-16.
40. The decision of the African Court in this connection is equally instructive as it opined that even where a State Party has already ratified the Charter at the time of the alleged acts, it lacked jurisdiction *ratione temporis* to consider the violation because the alleged act occurred before the coming into force of the Protocol which grants it jurisdiction to hear *inter alia*, the alleged violations of the Charter. ZONGO AND OTHERS V BURKINA FASO (PRELIMINARY OBJECTIONS) 2013 1 AFCLR 197, PG 207.
41. In the light of the foregoing, the Court is of the considered view that in human rights violation matters lodged before the ECOWAS Court of Justice, it is limited to facts or violations that occurred after January 19, 2005, being the critical date of its provisional entry into force and therefore not subject to retroactive enforcement. Consequently, in view of the fact that the alleged massacre took place in 1990 the Court cannot exercise its jurisdiction and apply the Protocol to determine a matter that predated its existence and grant of human rights mandate.



42. Having said that, The Court recalls the Applicant's argument that the Respondent mischaracterizes their case by arguing that the Court does not have temporal jurisdiction over the Lutheran Church massacre. They emphasize that their case concerns the Respondent's ongoing failure to investigate and prosecute those responsible for the massacre and provide access to justice to the massacre's victims, and not on any acts or omissions attributable to the State arising out of the massacre itself.
43. This failure, the Applicant alleged is a violation of Article 1 of The African Charter which provides as follows: *"The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative and other measures to give effects to them."*
44. Article 1 above envisages an obligation of absolute character requiring the States Parties to take legislative, judicial as well as administrative and other appropriate measures to fulfil their obligations. In principle, Member States are obliged under this Article to respect, protect, promote, and fulfil the rights enshrined in the Charter.
45. In this wise, under their obligation to protect, States are obliged to investigate all acts of crime and prosecute all perpetrators. Therefore, States have a duty to conduct prompt, and impartial investigations where any act of arbitrary deprivation of life has occurred. A State will be in neglect of its obligation under international law if it fails to carry out effective investigations into crimes committed on its territory. DEYDA HYDARA JR & 2 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/17/14 @ pg. 6. See MRS. HELEN JOSHUA & ANOR. V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/22 @ PG. 37/38, PGH 97.
46. That being said, it must be emphatically stated that the obligation to investigate and prosecute above does not exist in isolation nor is it a standalone duty. It is an obligation that is deeply rooted in established violation(s) of guaranteed human rights under the Charter. It is an ancillary rights derivable from the violation of the substantive rights enshrined in the Charter. In other words, an order to investigate and prosecute violators of human rights may only be made upon the condition that the right in

question is established to have been violated. KARIM MEISSA WADE V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/19/13 PG. 28

47. This position above was very well articulated by the United Nations Human Rights Committee when it found that Article 2 of the Convention constitutes a general undertaking by States and cannot be invoked in isolation by individuals but in conjunction with other Articles of the Covenant. Thus, the right to a remedy under Article 2 of the Convention arises only after a violation of a Covenant right has been established. S. E. V. ARGENTINA COMMUNICATION NO. 275/1988 A/ 26 MARCH 1990 PG. 5.2-5.3
48. In similar terms, the position of the Human Rights Committee with respect to its jurisdiction *ratione temporis* on violations that occurred prior to the entry into force of the Covenant and the Optional Protocol is that Article 2 (3) invoked by the Applicants in conjunction with Article 6 of the Covenant, may give rise in certain circumstances to a continuing obligation to investigate violations that occurred before the entry into force of the Covenant, in so far as such a procedural obligation derives from the substantive obligation under Article 6 of the Covenant. It can therefore only be applied if the status of the alleged victim is also a victim of a possible violation of Article 6 has been *prima facie* established or acknowledged. K.K. AND OTHERS COMMUNICATION NO. 2912/2016 PGH. 6.3-6.4
49. The Court notes that the case of the Applicant is specifically on an alleged ongoing failure of the Respondent to investigate the Lutheran Church massacre and prosecute the perpetrators to provide access to justice to the victims of the massacre. They are emphatic that it is not hinged on any violation of rights attributable to the State arising out of the Massacre itself. The implication of this is that the Applicants have not placed before the Court for its consideration the act or omission of the Respondent in respect of the massacre. Yet they are seeking the Court to make a pronouncement on the failure to investigate the massacre, an ancillary right which is not rooted in any substantive rights to life provided by the Charter.
50. A finding of failure to investigate a violation of a right cannot therefore be made in the absence of an examination and a finding of the violation of that right. Therefore, the Court in making a finding on the violation of the



Respondent's obligation to investigate the said massacre, cannot sidestep the process of first examining and finding a violation of the right to life of the victim of the alleged massacre.

51. Flowing from above, the Applicant's case becomes more complex considering the fact that even if the allegation of the right to life arising from the said massacre were placed before the Court, the Court lacks jurisdiction to determine the act or omissions arising from the said massacre same having predated its existence and the grant of its human right mandate.

52. Consequently, where the substantive right is not before the Court or where it is expressly not within its jurisdiction as in the instant case, it is utterly impracticable for the Court to delve into an ancillary claim arising therefrom. The obligation to investigate does not arise in a vacuum. It is founded on other rights as prescribed under the Charter. To this end, for the Court to assume jurisdiction over a matter, it must be established that there was a violation of the right upon which the Court can adjudicate over. HOPE DEMOCRATIC PARTY & 1 OR V FEDERAL REPUBLIC OF NIGERIA & 5 ORS ECW/CCJ/JUD/19/15 @ PG. 10.

53. Having addressed the Applicant's alleged failure of the Respondent to investigate the 1990 massacre, the Court must also proceed to address the second component of the Applicant's allegation that the failure to investigate is a continuing violation. Whereas the principle of non-retroactivity of enforcement of treaties is well established in the human right system, it is not absolute as it accommodates an exception known as the principle of continuing violation which has emerged across human rights regimes to deal with those violations whose effects persist after the critical date.

54. In that regards, where a violation whose effect persists after the critical date, i.e. the date of entry into force of the Protocol, such act being continuing in nature are exempt from the principle of non-retroactivity. EVARISTUS DENNIS EGBEBU V FRN ECW/CCJ/JUD/14/21, ALHAJ HAMMANI TIDJANI V FRN & 4 ORS ECW/CCJ/JUD/04/07, CCJELR 2004-2009, SIKIRU ALADE V FRN ECW/CCJ/JUD/10/12 CCJELR 2012, VALENTINE AYIKA V. REPUBLIC OF LIBERIA ECW/CCJ/JUD/09/12.



55. The notion of “instantaneous” and “continuous” acts of violations has been aptly distinguished by the provision of Article 14 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted 2001 thus:

“(1).The violation of an obligation by an act of a State that is not continuous occurs at the time the act is performed, even if its effects persist.

(2).The violation of an international obligation by an act of a State that is continuous in nature extends for the entire period during which the act continues and remains in violation of the international obligation.

(3).The violation of an international obligation requiring the state to prevent a certain event will take place at the moment that event begins and extends throughout the period during which the event continues and remains in contravention of that obligation.”

56. The African Court of Human Rights has also found credence in this notion where it categorized continuous violations as those which began before the entry into force of the protocol and persisted after the operationalization of the Protocol. *TANGANYIKA LAW SOCIETY & THE LEGAL AND HUMAN RIGHTS CENTRE V TANZANIA, & REVEREND CHRISTOPHER MTKILA V TANZANIA* 009/2011 - 011/2011 PGH 84.

57. In addressing the further claim of the Applicant that the failure of the Respondent to investigate the massacre is a continuous violation of its obligation, it is apt to state that an act does not have a continuing character merely because its effects or consequences extend in time. It must be a wrongful act over which the Court can exercise its jurisdiction. See *BENEFICIARIES OF LATE NORBERT ZONGO & OTHERS V BURKINA FASO (PRELIMINARY OBJECTIONS)* (2013) 1 AFCLR 197 PGH 66- 69.

58. The considered opinion of the Court in this regards is that the substantive right relevant to the alleged massacre is the right to life provided by Article 4 of the Charter. The Court having earlier held that it lacks jurisdiction to adjudicate over the alleged massacre same not before it and further predates its mandate, the Applicant’s claim that the Respondent’s failure to investigate is continuous finds no credence.



59. Accordingly, in the absence of the finding of a violation of a substantive human right upon which the Court can exercise its jurisdiction, the issue of continuing violation is therefore mute. Indeed, *ex nihilo nihil fit*.
60. In the light of the foregoing, the Court is unable to proceed to examine the failure of the Respondent to investigate and prosecute the perpetrators of the Lutheran massacre without a finding of a violation of the relevant substantive right over which it can assume jurisdiction.
61. In concluding the examination of the Applicants case, the Court notes that while the Applicants are vehement in affirming that they are not seeking redress for any acts or omissions attributable to the State arising out of the massacre itself but an order to investigate, (Doc7 ph. 6), the Court notes the inconsistency in this affirmation as the relief sought in their initiating application (Doc1 ph. 49) includes a declaration that the Respondent violated the Applicants' rights enshrined in Articles 1, 4, 5 and 7(1) of the African Charter.
62. In any event, the Applicants are precluded from seeking a relief for the violation of Article 1 as it concerns obligation to investigate and prosecute perpetrators of the 1990 massacre without the Court finding a violation of a particular right over which it can assume jurisdiction.
63. In the whole, the Court finds that the alleged Lutheran Church Massacre which took place in 1990 predated the existence and the grant of human right mandate to the court. The Court holds that the jurisdiction of the court in that wise cannot be activated retroactively.
64. Having earlier held that the alleged failure to investigate the alleged massacre was not based on a human right violation upon which the Court can assume jurisdiction, in that regards, the alleged continuous nature of the failure does not engender a retroactive operation of the jurisdiction of the Court. Consequently, it lacks jurisdiction to adjudicate on the instant Application.
65. With regards to the objection that the Application is inadmissible, having dismissed the Application for lack of jurisdiction, an examination of its admissibility is mute.



VIII. COSTS

66. Pursuant to Article 66 (4) of the Rules of Court, the Court decides that each party shall bear their own costs.

IX. OPERATIVE CLAUSE

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

As to Jurisdiction:

- i. **Dismisses** the preliminary objection of the Respondent that the application is statute barred.
- ii. **Upholds** the objection of the Respondent and declares it lacks jurisdiction to adjudicate over the Application same predating its existence and grant of human rights mandate.

As to Costs:

- i. Orders each party to bear their costs.

Hon. Justice Edward Amoako Asante



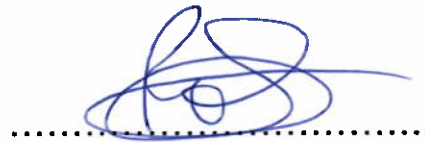
Hon. Justice Gbéri-Bè Ouattara



Hon. Justice Dupe Atoki



Dr. Yaouza OURO-SAMA



Done in Abuja this 17th day of October 2024 in English and translated into French and Portuguese.

