COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

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IN THE COMMUNITY COURT OF JUSTICE OF

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

HOLDEN IN ABUJA NIGERIA

ON THE 12TH OF DECEMBER, 2019

SUIT NO: ECW/CCJ/APP/22/18

JUDGMENT NO. ECW/CCJ/JUD/37/19

BETWEEN:

1. **WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES)** **APPLICANTS**
2. **CHILD WELFARE SOCIETY, SIERRA LEONE (CWS-SL) (ON BEHALF OF PREGNANT ADOLESCENT SCHOOL GIRLS IN SIERRA LEONE)**

AND

THE REPUBLIC OF SIERRA LEONE **RESPONDENT**

COMPOSITION OF THE COURT

HON. JUSTICE EDWARD AMOAKO ASANTE - PRESIDING
HON. JUSTICE GBERI-BE OUATTARA - MEMBER
HON. JUSTICE JANUARIA T. SILVA MOREIRA COSTA - MEMBER

ASSISTED BY:

MR. ATHANASE ATANNON - DEPUTY CHIEF REGISTRAR

JUDGMENT

PARTIES:

The 1st Applicant is a Non- Governmental Organisation (NGO) registered in the Republic of Sierra Leone with a focus on women and girls' rights particularly committed to ending discrimination against women. It is located at No. 4 Amara Street, Shellmingo, Bo City, Sierra Leone.

The 2nd Applicant is a child focused advocacy organisation that seeks to promote the welfare of children with a focus on those most vulnerable. It is situate at No. 140 Circular Road, Freetown, Sierra Leone.

The Defendant is the Republic of Sierra Leone, a Member State of the Economic Community of West African States, ECOWAS.

SUBJECT MATTER:

The Application concerns violation of Pregnant Girls' Rights comprising right to education and discrimination as guaranteed under:

- Articles 1, 2, and 17(1) of the African Charter on Human and Peoples' Rights;
- Articles 1, 3, 4, 11 and 24 of the African Charter on the Rights and Welfare of the Child;
- Articles 2 and 12 of the Protocol to the African Charter on the Rights of Women in Africa;
- Articles 1, 3, and 4 of the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education;
- Articles 2, 3, 4 & 28 of the Convention on Rights of the Child;

- Articles 2, 3, 5(a) & 10 of the Convention on Elimination of Discrimination against Women;
- Articles 2(2), 3 & 13 of the International Covenant on Economic, Social and Cultural Rights; and
- Articles 2, 26 & 28 of the Universal Declaration on Human Rights.

APPLICANTS' CASE:

The Applicants, on the 17/05/2018 brought this application for enforcement of the fundamental rights of pregnant adolescent school girls in Sierra Leone. It is the case of the Applicants that the issue of exclusion of pregnant girls from attending school in Sierra Leone pre- dated the 1991-2002 civil war that ravaged the country. The Applicants added that after the civil war, as a measure to address the menace, the Truth and Reconciliation Committee (TRC), set up in Sierra Leone advocated for a national strategy for the reduction of teenage pregnancy.

The Applicants further averred that with the support of its development partners, the Respondent successfully instituted a strategy to deal with the menace of unbridled teenage pregnancies and its attendant social repercussions. The strategy, according to the Applicants centred on reduction of teenage pregnancies; ensuring that girls attend and remain in school to acquire education for their own development, and the overall socio economic development of the State.

The Applicants also averred that the strategy, however, was later truncated by the outbreak of Ebola disease in Sierra Leone which compelled schools to close down. Applicants stated that the resultant effect of the close down of schools was increased rate of teenage pregnancy after the Ebola disease was contained.

According to the Applicants, because of the high rate of pregnancy amongst school girls; up to sixty-five percent (65%) in some regions, the then Minister of Education, Science and Technology, Dr. Minkailu Bah made a public statement which became more of a policy statement directing that all pregnant school girls will not be allowed to be in school with their pregnancies as they serve as negative influence on their peers.

The Applicants are saying that the policy by the Respondent barring pregnant school girls from attending school with pregnancy is a violation of the rights of the affected girls to education and amounted to discrimination.

The Applicants claim that the voicing of the ban by the Minister *"reversed the progress that had been made through the National Teenage Strategy in advocating for education of the girl child including pregnant girls"*. They added that *"the voicing of the ban officially by the Minister cemented an informal, sporadic practice into government policy effectively formalising the policy and exacerbating the position of pregnant girls, that indeed, victims of the ban claim that they were asked to stop attending school when their pregnancies became visible in line with the Government Policy. Some further claim that they were asked to stop attending school so as not to mingle with other students and influence them"*.

The Applicants state that attempts were made by the Respondent to provide alternative schools for pregnant girls but the schools are not accessible as main stream schools and subjects offered are limited to only four; mathematics, English language, integrated science and social studies, essentially offering limited education and that it integrated all learners of different ages and academic progress into one classroom.

The Applicants say that even though the affected girls were allowed to return to school, many have been unable to do so, owing to the stigma attached to teenage pregnancies and the attendant economic hardship which has forced parents and guardians alike to abandon provision of support for the victims.

The Applicants claim that the Committee on the Rights of the Child, the body that monitors the implementation of the United Nations Convention on the Rights of the Child, has criticised the Policy as discriminatory. The Applicants added that, the Committee's concluding observations on the third to fifth periodic reports of Sierra Leone, expressed serious concern at what it termed as the *"discriminatory policy the Ministry of Education instituted in March 2015 of barring 'visibly pregnant girls from attending school"*.

According to the Applicants, the Committee opined that such a policy is in clear violation of Articles 2, 3, 4 and 28 of the Convention on the Rights of the Child that obligate State Parties to a practice of non-discrimination; ensuring the best interests of the child and promoting the right to education of the child. The Committee called on the Respondent State to immediately lift the discriminatory ban on pregnant girls from attending mainstream schools and that pregnant girls and adolescent mothers should be supported and assisted in continuing their education in mainstream schools.

The Applicants attached statements of eight (8) witnesses and six (6) Exhibits; Amnesty International Report titled "Shamed and Blamed; Pregnant Girls rights at risk in Sierra Leone, Press Release from the Guardian Newspaper dated 11th May 2015, Press Release from Amnesty International dated 8th November 2016, Press Release from Voice of America News dated 13th April 2015, Certificate of Registration for Women Against Violence and Exploitation in Society (WAVES) and Certificate of Registration for Child Welfare Society, Sierra Leone (CWS-SL)

RELIEFS BEING SOUGHT:

Based on the foregoing, the Applicants sought for the following reliefs from the Court:

1. **A DECLARATION** that the current policy implemented by the Republic of Sierra Leone that prohibits pregnant girls from attending school is grossly unlawful, discriminatory, not in the children's best interest and that it violates their rights to non-discrimination and to education in accordance with Articles 1, 2 and 17(1) of the African Charter on Human and Peoples' Rights ('the Charter'); Articles 1, 3, 4, 11 and 24 of the African Charter on the Rights and Welfare of the Child; articles 2 and 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Articles 1, 3 and 4 of the United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education; articles 2, 3, 4 and 28 of the Convention on the Rights of the Child; Articles 2, 3, 5(a) and 10 of the Convention of Elimination of Discrimination against Women; Articles 2(2), 3 and 13 of the International Covenant on Economic, Social and Cultural Rights; and Articles 2, 26 and 28 of the Universal Declaration of Human Rights.

2. **AN ORDER** that the prohibitive policy be immediately revoked.

3. **AN ORDER** that the Respondent State develops strategies, programmes and nation-wide campaigns that focus on addressing the issue of teenage pregnancy in Sierra Leone through public education or awareness on sexual and reproductive health rights as this increased community knowledge on family planning and contraceptives will support efforts to address the high rate of teenage pregnancy.

4. **AN ORDER** that the Respondent State develops strategies, programmes and nation-wide campaigns that focus on reversing negative societal attitudes that support the discrimination and bias against pregnant girls attending school and that foster the violation of their and teenage mothers' right to continuous education (sic). In this regard, public education on the right to education, especially for girls as it impacts on socio-economic development, should be prioritised.

5. **AN ORDER** that the Respondent State develops strategies, programmes and nation-wide campaigns to enable teenage mothers to attend school. This may range from providing subsidies to enable girls with children to attend school; developing alternative schooling offering the same quality and standard of education as that offered in mainstream schools; and/or development of income-generation programmes or skill-based programmes for pregnant girls and their family members.

6. **AN ORDER** that the Respondent State integrates sexual and reproductive health into school curricula as this increased knowledge on family planning and contraceptives will support efforts to address the high rate of teenage pregnancy.

7. **ANY SUCH FURTHER ORDER** or orders that the Court deems appropriate.

PROCEDURAL ISSUES:

On the 23/01/2019 the Applicants filed a motion for judgement in default of defence by the Respondent. On 25/02/2019, following the motion for default judgement the Respondent filed a Motion for Preliminary Objection pursuant to Supplementary Protocol A/SP.1/01/05, Articles 87(1) and 88 of the Rules of Procedure of the Court and the Inherent Powers of the Court on grounds that;

a. The Court lacks jurisdiction to entertain the application against the Respondent;

b. That the Court also lacks the jurisdiction to entertain the application as against the Respondent/Applicant for violation of pregnant girls rights.

The submission of the Respondent is that 2nd Applicant is not registered in Sierra Leone and that Pregnant Adolescents School Girls is also not a legal personality and as such both cannot sue or be sued in their names. The Respondent therefore urged the Court to dismiss the application and all annexures with costs.

Amicua Curiae

On 28/02/2019, Amnesty International approached the Court via a motion seeking for leave of the Court to make written submission as Amicus Curiae. On the 7/05/19, the Court had its first session in the case and both parties were duly represented by their counsel and the counsel of Amnesty International was in attendance. The application by the Amnesty International was granted. The Respondent's request for adjournment to enable it file its response to the Applicants' application was equally granted with costs of Ten Thousand United States Dollars (US$10,000) in favour of the Applicants. The Applicants applied for the name of the 2nd Applicant to be struck out from the suit and same was granted making the 1st Applicant the sole Applicant in the case.

On 03/06/2019, the Respondent filed its Defence to the Applicant's application whiles the Amnesty International filed its amicus curiae submission on the 19/06/19.

RESPONDENT'S CASE:

The Respondent in its statement of defence expressly denied each and every allegation of facts contained in the Applicant's application dated 17th day of May, 2018. The Respondent stated that the Republic of Sierra Leone is committed to upholding human rights that is why it specifically guaranteed human rights in its constitution and prohibited discrimination. According to the Respondent, to advance the rights of pregnant girls and ensure they remained at school the State adopted a national strategy to address the issue. The Respondent added that the Ebola outbreak was responsible for the closure of schools.

The Respondent stated further that soon after the Ebola disease was contained, it was discovered that there had been upsurge in the number of teenage pregnant girls. The Respondent says that it established separate schools for girls who have become pregnant to cater for their obvious fragile situation. The Respondent further stated that the statement by the then Minister of Education, Science and Technology was an isolated case and his statement was immediately reversed by the government of the Respondent. It, therefore, urged the court to discountenance the application of the Applicant.

On the 27/06/19, the parties were represented in Court and were afforded opportunity to present their respective cases which they did by adopting all processes filed by them. The counsel for the Amicus Curiae was also granted opportunity to expatiate on the Amicus brief and the case was adjourned for judgment.

PRELIMINARY OBJECTION:

The Preliminary Objection was substantially to challenge the competence of the Court to entertain the Application against the Respondent for want of jurisdiction. Two legal grounds were raised in the objection as follows:

a. ***That the 2nd Applicant is not a corporate body because it is not registered in Sierra Leone and as such does not possess legal personality to sue or be sued;***

b. ***That the court lacks the jurisdiction to entertain this application for violation of the rights of the pregnant girls.***

The Applicants having successfully applied for the 2nd Applicant to be struck out from the suit automatically renders the first ground of the Preliminary Objection by the Respondent moot.

Since the second ground of the Respondent's preliminary objection is intertwined with its submissions and arguments on the substantive matter, this Court deems it proper and convenient to proceed to determine the substantive matter together with the second leg of the Respondent's Preliminary Objection.

ISSUES FOR DETERMINATION:

1. Whether the court has the jurisdiction to hear and determine this matter.

2. Whether there is evidence of a ban by the Respondent barring pregnant adolescent school girls from attending school in Sierra Leone as a result of Pregnancy.

3. Whether from the facts as presented by the Applicant there exists discrimination against pregnant school girls in Sierra Leone.

4. Whether the Applicant is entitled to the reliefs sought.

We shall deal with the issues in the order set down herein.

1. **WHETHER THE COURT HAS JURISDICTION TO HEAR AND DETERMINE THIS MATTER**

The issue of jurisdiction is vital to the hearing and determination of any matter before a court. Whether raised by the parties or not, the court can on its own volition raise the issue and deal with it before going into the substantive issue otherwise anything done without jurisdiction becomes a nullity. In the case of ***ESSIEN v. REPUBLIC OF THE GAMBIA (2005) 3 CCJLR (pt.2)1 at 45,*** this Court held that:

"the significance of the issue of jurisdiction is that where a matter is heard and determined without jurisdiction, it amounts to a nullity, no matter how well conducted the case may be."

Jurisdiction is conferred by statute and in determining whether it has jurisdiction or not, the Court places reliance not only on its texts but also the claim put forward by the applicant and the relief sought. In the case of ***BAKARY SARRE & 28 ORS v. REPUBLIC OF MALI, ECW/CCJ/JUD/03/11,*** the Court stated in paragraph 25 of its judgment that:

"The competence of a Court to adjudicate in a given case depends not only on its text but also on the substance of the initiating application. The Court accords every attention to the claim made by the application, the pleas in law invoked....."

See also the case of ***MR. CHUDE MBA v. REPUBLIC OF GHANA ECW/CCJ/JUD/10/13*** where the Court held in paragraph 50 of its judgment that

"As a general rule, jurisdiction is inferred from the Plaintiff's claim and in deciding whether or not the Court has Jurisdiction to entertain the present action reliance has to be placed on the facts as presented by the Plaintiff"

The jurisdiction of this court is provided for under Article 9(4) of the 2005 Protocol of the Court as amended. The said Article 9(4) provides as follows:

"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State"

The above Article 9(4) of the Supplementary Protocol A/SP.1/01/05 amending the Protocol A/P1/7/91 relating to the Community Court of Justice relates to the subject matter jurisdiction of the Court.

In terms of Access to the Court, Article 10(d) of the same Supplementary Protocol provides that access to the court is open to the following:

"Individuals on application for relief for violation of their human rights; the submission of application for which shall:

i. Not be anonymous

ii. Be made whilst the same matter has been instituted before another International Court for adjudication".

For a court to assume jurisdiction over any matter, it must satisfy itself that it has the competence as regards the subject matter, the parties before it and even over the reliefs being sought.

In the instant case, firstly, the subject matter of this proceeding is provided for in paragraph 3.0 of the Applicant's application. The applicant in summary is alleging violation of the right to education and freedom from discrimination of pregnant adolescent school girls in Sierra Leone contrary to Articles 1, 2 and

17(1) of the ACHPR, Articles 1, 3, 4, 11 and 24 of the African Charter on the Rights and Welfare of the Child amongst others.

The rights provided for and guaranteed under those provisions are clearly human rights of which the court has in a plethora of cases maintained its competence to adjudicate upon. **See BAKARRY SARRE & 28 ORS v. MALI (supra).**

Secondly as regards access to the Court or who can be a party before the Court, Article 10(d) is clear as to individual victims for violations of human rights. The Court has also in a plethora of cases allowed legally recognised NGOs to bring action on behalf of victims of human rights violations. **See the cases of SERAP v. FEDERAL REPUBLIC OF NIGERIA & ANOR Suit No. ECW/CCJ/APP/12/07, MEDIA FOUNDATION FOR WEST AFRICA v. REPUBLIC OF THE GAMBIA Suit No. ECW/CCJ/APP/15/1.**

The application before this Court is brought by the Applicant, Women against Violence and Exploitation in Society (WAVES), a non-governmental organisation, on behalf of pregnant adolescent school girls in Sierra Leone.

The Applicant is a legally recognised Non-Governmental Organisation and is maintaining this action on behalf of a section of the community in Sierra Leone whose right to education the Applicant believes is being violated; it is therefore maintaining this action in the public interest. The Respondent, on the other hand is saying that the actual victims of the alleged violation have not been joined as parties to the suit and therefore contends that the Applicant lacks sufficient interest to litigate this action.

In considering the facts of the application and underscoring the primacy of human rights, the Court is obligated to interrogate the aspect of public interest

litigation in this context. This is to ascertain whether or not the Applicant can initiate this application in the absence of the direct victims of the alleged violation, albeit on their behalf.

According to Black's Law Dictionary 9th Edition, the words "public Interest"; connote ***"the general welfare of the public that warrants recognition and protection".*** In other words, public interest litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

Public interest litigations are aimed at protecting and promoting collective legitimate human rights and public policy which may be subject to government or other forms of violation. It is, therefore, imperative to state that the protection of human rights and the improvement of social and economic rights of the vulnerable people is a critical part of social contract and one of the cardinal and historical objectives of public interest litigation.

In the case of **REV. FATHER SOLOMON MFA v. FRN, ECW/CCJ/JUD/06/19,** this Court extensively expounded on the principle of *actio popularis* where it found that:

"The law recognizes the rights of individuals and corporate bodies who are not victims to bring an action in a representative capacity under the principle of actio popularis. The Court under this situation will allow NGOs and public spirited individuals to institute actions on behalf of groups of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such

magnitude which affects the general public interest. Public interest issues are generally for the welfare and wellbeing of every individual in a society".

Similarly, in **SERAP V. FRN (2010) CCJELR, pg. 196, para 32 & 34,** the Court held that: ***"The doctrine of actio popularis was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court".***

In public interest litigation, the Applicant needs not show that he has suffered any personal injury or has a special interest that needs to be protected to have locus standing. The Applicant must establish that there is a public right worthy of protection which has been allegedly breached and that the matter in question is justiciable and the action is not instituted for the personal gains of the Applicant.

It is therefore submitted that in Public International Law, just as in the instant case, the requirement of identification of victims cannot be said to be fatal to the case in the strict sense of it, particularly as the alleged act is one that has aroused public concern. Furthermore, looking at the futuristic aspect, the alleged violation if not curbed will likely become detrimental to other victims who become pregnant while in school. Additionally, considering that the reliefs sought are declaratory in nature which would in the long run protect similar violations, the requirement of identity should not serve as a disadvantage since there are no monetary awards that will necessitate the strict identification of the victims.

In the light of the above, this Court holds that notwithstanding the anonymity of the victims, the case is admissible as a matter of being driven by public interest.

2. **WHETHER THERE IS A BAN BY THE RESPONDENT BARRING PREGNANT ADOLESCENT SCHOOL GIRLS FROM ATTENDING SCHOOL IN SIERRA LEONE AS A RESULT OF PREGNANCY.**

In paragraph 4.0 of the application, the applicant stated thus:

"Concerns the ban by the Republic of Sierra Leone of pregnant girls in Sierra Leone from attending school".

The Applicant continued that,

"girls who fall pregnant while completing their secondary or primary education are prohibited by the State from attending school simply because of their pregnancy".

The Applicant claims that the then Minister of Education, Science and Technology in Sierra Leone, one Dr. Minkailu Bah published in media statements that visibly pregnant girls in Sierra Leone would no longer be able to attend school upon the reopening of schools as pregnant girls served as negative influence on their peers.

The Respondent on the other hand, in its statement of Defence, denied the existence of a ban on pregnant school girls from attending school. In paragraph 6 of its statement of defence, it corroborated the claim of the applicant that the then Minister of Science and Technology made the statement which was unfortunate, but stated that; *''the Minister unilaterally making an error in judgement by issuing a ban on pregnant girls in the Basic Education Certificate Examinations class from taking their external examinations".* The Respondent

again says that *"the ban, a singular event done in isolation and done without due recourse to the Cabinet, which is the final decision making body of the Government of the Republic of Sierra Leone, was quickly reversed"*. It went further to say after reversing the ban, it set up alternative schools for those who had become pregnant.

From the facts as presented by the parties in their respective application and defence, it is clear and without doubt that there was a publication from a top government official that intended to stop pregnant adolescent girls from attending school. This fact was not denied by the Respondent. It is also factually established that the statement was an isolated case by the individual top official. This also was not controverted by the Applicant. In fact, the Applicant in paragraph 5.7 of its application stated thus:

"Attempts were made to create alternative schools for some girls. However the schools established in line with this system were not as accessible as mainstream "regular" schools and additionally, did not offer the same quality of education as that taught at mainstream schools. The alternative schools only operated three days a week and only made provision for the study of four core subjects- Maths, English language, Integrated Science and Social Studies; essentially offering "limited" education".

The Applicant also in paragraph 6.1 of its Application further avers in part that:

"Following their pregnancies, girls are allowed to return to school, however, as a result of the stigma attached to teenage pregnancies many of the girls' families became unwilling to support the pregnant girls' cost of education".

The Law of State Responsibility is the branch of Public International Law that regulates the determination of the legal liability of a state for internationally

wrongful acts. To be liable under this body of rules, it must be shown that the impugned acts are:

a) attributable to the Respondent state; and

b) that the acts violate international legal obligations binding on the Respondent State at the time of their commission.

One can hardly dispute that the publication by the Minister of Education infringes various human right norms in the African Charter, the Universal Declaration of Human Rights and other human right instruments that are binding on Sierra Leone. The Minister's statement published in the media is a clear evidence of prima facie violations of the rights to education and non-discrimination of the affected pregnant girls. Thus, the question whether the said statement violates Sierra Leone's extant international obligations, particularly in the area of human rights, can be answered in the affirmative, at least tentatively.

That leaves the first question of whether the Minister's statement is attributable or imputable to the Republic of Sierra Leone. Generally, for a conduct (either an act or omission) to be attributable to a state, it must meet the threshold of being an ***"act of the state"*** as demanded by act of state doctrine. This test is satisfied if the conduct was perpetrated by an organ, agency, or other instrumentality of the state regardless of whether it was performing executive, legislative or judicial functions, and again, regardless of its position in the constitutional structure of the state. **It also does not matter that in the particular instance, the organ, agency or instrumentality of the state acted beyond the scope of its authority or in disregard of instructions.**

What this means, from the foregoing, is that acts of state officials done in their official capacity are *"acts of the state"* and therefore do form the basis of

international liabilities of the state. There is no general "immunity of a state" from liability for acts of its officials if only it can be shown that the acts of the official concerned were carried out either by way of exercising elements of governmental authority (i.e., public or regulatory functions) or were acting under the direction, instructions or control of the state.

There is also liability if by its conduct (e.g., public statements by government officials directing, praising or endorsing certain acts) the state can be said to have been complicit in the wrongful acts of its officials. State responsibility for wrongful acts of its officials also crystalizes when the state fails in the exercise of its due diligence obligation regarding the conduct of its officers. The due diligence obligation requires the state to utilize its security and intelligence resources to anticipate and prevent acts of officers that may breach the state's international obligations. If the wrongful acts of any state official were probably spontaneous or caught the state unawares, there still exists for the state a continuing due diligence obligation to mitigate the effect of the breach, correct any anomalies created, find the implicated officials, punish them to the fullest extent of the law and offer assurances of non-repetition to the injured persons, as the circumstance may require. Consequently, what is otherwise a private and isolated act of a state official may be translated into an "act of the state" for which a Respondent State is liable irrespective of whether the state has adopted the private or the isolated acts of the official concerned, especially where the State failed to exercise its due diligence obligation.

In this instant case, since the Minister of Education was engaged in his official duties at the time he published the statement, the liability of the Respondent for the statement cannot be excluded under the rules of state responsibility. To consider Sierra Leone not liable for the acts of its officer in this circumstance requires a high degree of proof. There must be evidence that the Minister made

the statement not in his official capacity, probably, coupled with official action by the Respondent to punish the Minister or removing him from office.

It must be noted that the performance of functions of the Ministers of State are within the legal architecture of the state and for that matter has the full legal backing of the state. The remedies provided by the Respondent in its efforts to mitigate the effect of the breach on the victims by establishing different schools for the victims and distancing itself from the acts of the Minister could not be exonerative of its liability for the wrongful act of its agent.

In the light of the foregoing analysis of the facts and the legal considerations pertaining to the case, the Court finds that, contrary to the submissions of the Respondent, the Minister's statement is attributable and imputable to the Respondent and same amounted to an unlawful ban on pregnant adolescent girls from attending school and the Court so holds.

3. WHETHER FROM THE FACTS AS PRESENTED BY THE APPLICANT THERE EXISTS DISCRIMINATION AGAINST PREGNANT SCHOOL GIRLS IN SIERRA LEONE.

Another allegation by the Applicant against the Respondent is discrimination against pregnant girls in education. The Applicant cited discrimination arising from the violation of Articles 1, 3 and 4 of the United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education; Articles 2, 3, 4 and 28 of the Convention on the Rights of the Child; Articles 2, 3, 5(a) and 10 of the Convention on the Elimination of all forms of Discrimination against Women; Articles 2(2), 3 and 13 of the International Covenant on Economic, Social and Cultural Rights; and Articles 2, 26 and 28 of the Universal Declaration of Human Rights.

The Applicant then went further specifically to express the form in which the Respondent manifests the discrimination in its claim. It averred in paragraph 5.5 of its claim thus;

"that the Minister of Education, Science and Technology, Dr. Minkailu Bah proclaimed in media statements that visibly pregnant girls would no longer be able to attend school upon the re-opening of schools as pregnant girls served as negative influence on their peers". In paragraph 5.6 of its claim it further averred that;

"Indeed, victims of the ban state that they were asked to stop attending school when their pregnancies became visible in line with the government policy. Some further stated that they were asked to stop attending school so as not to mingle with other students and influence them". It continued again in paragraph 5.7 to state as follows:

"Attempts were made to create alternative schools for some girls. However the schools established in line with this system were not as accessible as mainstream "regular" schools and additionally, did not offer the same quality of education as that taught at mainstream schools. The alternative schools only operated three days a week and only made provision for the study of four core subjects- Maths, English language, Integrated Science and Social Studies; essentially offering "limited" education. Furthermore, the schools reportedly integrated all learners of different ages and academic progress into one classroom. Limited information was provided to communities on the schools established in line with the system and the financial support promised to be provided so as to facilitate attendance of pregnant learners was reportedly not provided".

The Applicant claims that the statement by the Minister cemented an informal, sporadic practice into government policy effectively formalising the policy and exacerbating the position of pregnant girls. The Applicant states that the statement brought about stigmatisation of pregnant girls in school leading to most of them dropping out of school which actions the Applicant describes as discriminatory against the pregnant school girls.

The Respondent in its Defence to the Applicant's averments admitted the fact that the statement was actually made by the Minister of Education but added that it was immediately reversed by the Government. It also admitted that separate schools were established for pregnant girls to cater for their welfare. It did not deny in its defence, the issue of reduced subjects for pregnant girls to only four (4) and the fact that the schools only operate three (3) times a week unlike the regular schools. It also did not provide sufficient information or facts to disprove the Applicant's claim that the established schools were far short of standards compared to the mainstream schools.

From the facts as provided above, can the actions of the Respondent be said to be discriminatory against pregnant girls in education in contravention of the Articles cited by the Applicant to justify the reliefs sought?

The Black's Law Dictionary, 7th Edition defines discrimination as:

1. *The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap.*

2. *Differential treatment; especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured*

Articles 1 and 3 of the Convention against Discrimination in Education of 14 December 1960 provides in their relevant parts as follows:

Article 1. *"For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:*

a) Of depriving any person or group of persons of access to education of any type or at any level;

b) Of limiting any person or group of persons to education of an inferior standard;

c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

Article 3 *"In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:*

a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions.

The African Charter on Human and Peoples' Rights guarantees the right to education to every individual without distinction. It provides as follows:

Article 17 (1) *"Every individual shall have the right to education."*

The right to education is also guaranteed under the Convention on the Rights of the Child where it provides as follows:

Article 28(1) (a) *"State Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity.....;"*

28(1)(b) *" encourage the development of different forms of secondary education including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of needs; and*

28(1) (e) *"take measures to encourage regular attendance at schools and reduction of dropout rates."*

The African Charter on Human and Peoples Rights guarantees the enjoyment of all the rights contained in the Charter by all individuals without distinction and without discrimination and also to equal protection of the law by all individuals. Article 3 of the Charter provides as follows:

3(1) *every individual shall be equal before the law;*

3(2) *every individual shall be entitled to equal protection of the law.*

The Charter further provides that:

Article 2 *"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."*

The Charter also places an obligation on States to ensure the elimination of every form of discrimination against women. The relevant provision of the Charter reads:

Article 18(3) *"The State shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in International declaration and Conventions"*

Article 25 of the same Charter reiterates further that:

> *"States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood."*

From the above provisions of the African Charter (ACHPR) and the Convention on the Rights of the Child (CRC), two things are very clear:

i) discrimination in education in whatever form is prohibited;

ii) the responsibility of ensuring non-discrimination in education and the promotion of human rights rests with States parties.

The Respondent, the Republic of Sierra Leone is a Member State of ECOWAS and signatory to the ECOWAS Treaty and the Convention on the Rights of the Child. The Charter is recognised and adopted by the ECOWAS State parties. The implication is that the Respondent is bound by its provisions and that of the Convention on the Rights of the Child (CRC) and other International Human Rights instruments to which it has assented to.

From the above analysis of the law and facts as presented, especially the claim by the Applicant in paragraph 5.7 of its originating application which was not rebutted by the Respondent, it is obvious that the action of the Respondent is discriminatory against pregnant school girls, and this Court so holds. This court comes to this conclusion because there is no reasonable justification for the differential treatment meted out to the pregnant girls who were in school before becoming pregnant.

In the case of **ORŠUŠ & OTHERS V. CROATIA (Application no. 15766/03)** decided by the European Court of Human Rights on 16th March, 2010, in which the court was called upon to decide on what constitutes discrimination in Education, the Court stated in part that:

> ***"It is discriminatory to segregate especially when there is no reasonable justification for the different treatment."***

In the above case, the Applicants were fifteen (15) Croatian nationals of Roma origin who attended two primary schools between 1996 and 2000. At times they attended Roma-only classes. In April 2002 they brought proceedings against the schools alleging, inter alia, racial discrimination and a violation of their right to education, in that the Roma-only curriculum was significantly reduced in volume and content compared to the official national curriculum. They also submitted a

psychological study which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity. In September 2002 a Municipal Court dismissed their complaint after finding that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in Croatian and that the applicants had failed to substantiate their allegations concerning racial discrimination and the reduced curriculum. That decision was upheld on appeal.

The Applicants then brought the matter before the European Court of Human rights. After considering the case, the Court held by a majority of Judges that despite the very positive actions taken by the Respondent State following the period in question, the facts of the applicants' case nevertheless indicated that:

> ***"...their schooling arrangements were not sufficiently attended by safeguards that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State had had sufficient regard to their special needs as members of a disadvantaged group".***

As a result, the Applicant had been placed in separate classes where an adapted curriculum was followed, without clear or transparent criteria as regards their transfer to mixed classes. The Court therefore held that placement of Roma children in Roma-only classes owing to their allegedly poor command of the Croatian language is discriminatory and a violation of their right.

It is the Responsibility of the State of Sierra Leone to ensure that girls attend school just as their male counterpart. It is also equally its obligation to ensure that they are afforded equal opportunities as anyone else and not to be discriminated against on the basis of their status (pregnancy) by establishing

different schools with less facilities and standards while their fellow men or boys who may have impregnated them go about and enjoy regular schools with better facilities and full curriculum. Such act of segregation is indeed discriminatory.

Establishing separate schools for pregnant girls with equal standards is not in itself discriminatory if the rationale is to provide the essential health facilities and care that the pregnant girls in their precarious condition may need, but will definitely be discriminatory where the standards compared with the regular mainstream school are different as presented by the Applicant in paragraph 5.7 of its claim.

This more so, where the affected girls are not given the opportunity to decide which of the schools to attend. Separating them in this instance is discriminatory and stigmatising and could be seen as a form of punishment for being pregnant. This is further supported by the fact that the Applicant submitted the statements of eight (8) witnesses attesting to the segregation and discrimination. Six (6) of the witnesses claimed to be victims. The brief of the Amicus Curiae is also instructive on this.

It is, therefore, the finding of this Court that, from the facts as presented by the Applicant, there exists discrimination against pregnant school girls in Sierra Leone occasioned by the institution of the policy barring pregnant adolescent girls from attending mainstream schools.

Consequently, the Respondent is in breach of its commitments and responsibility under both local and international laws particularly, Articles 2, 3, 17(1), 18(3) & 25 of the Charter; Articles 28(1) of the Convention on the Rights of the Child; Articles 1 & 3 of the Convention against Discrimination in Education and the Court so holds.

Concerning the institution of alternative school for the pregnant girls, the Court holds that the establishment of separate school for the pregnant adolescent girls with four (4) taught subjects operating three (3) days a week is discriminatory and a violation of the right to (equal) education.

4. WHETHER THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT.

It is settled law that once the Court finds a violation of human rights, its discretion to order reparation is unquestionable. The kind of reparation to be granted by the court depends on the circumstances of each case. In the decided case of **SERAP vs. FEDERAL REPUBLIC OF NIGERIA JUDGMENT No.: ECW/CCJ/JUD/18/12,** the court, inter alia, held in paragraph 118 of its judgment that:

".....the obligation of granting relief for violation of human rights is a universally accepted principle. The Court acts indeed within the limits of its prerogative when it indicates for every case brought before it the reparation it deems appropriate."

Reparation could be pecuniary, that is monetary compensation for damage suffered by the victim as a result of the violation, or a declaratory or an order depending on the nature of each case. The Court, in making an order for reparation would have to consider the case of the Applicant and the nature of the reliefs sought by him or her.

In the instant case, the Applicant sought seven reliefs. The first and second reliefs of the Applicant have been dealt with supra that since the action of the Respondent is considered discriminatory as regards the treatment of pregnant school girls, it follows from the principle in the case of SERAP vs. FEDERAL REPUBLIC OF NIGERIA (quoted supra), that the Applicant is entitled to a

declaratory order in the circumstance of this case and the Court so declares as prayed for by the Applicant.

As to the Applicant's second relief seeking an Order of the Court that the prohibitive policy be immediately revoked, this Court having held that the ban was imposed in violation of the rights of the affected teenage pregnant girls, hereby further orders that the impugned policy be immediately revoked by the Respondent by publication in both electronic and print media in all communities throughout the jurisdiction of the Respondent.

As to the Applicant's third relief, the issues sought to be addressed by the said relief were not in issue before this Court and as such, the Court is bereft of power grant same. What is before the Court is the enforcement of right to education and freedom from discrimination and not the modalities for addressing the issue of teenage pregnancy as prayed for. There is a thin line between the mandate of this Court in the enforcement of human rights against member states based on their international commitments and obligations as against determination of propriety or otherwise of domestic administrative decisions, the latter rests with municipal courts of member states.

As has already been held, education is a right and it is the responsibility of the State to ensure that both males and females are afforded equal opportunities to education without distinction. This responsibility the State has covenanted to do by being signatory to all International Instruments relating to education and human rights of the girl child. In the instant case, having declared the Respondent's action discriminatory, reliefs 4, 5 and 6 relating to the education of the girl child is within the competence of the Court to grant because doing so will add meaning to the right to education. The Court in the case of SERAP vs. FEDERAL REPUBLIC OF NIGERIA (supra), stated in paragraph 118 that:

"it is mindful that its function in terms of protection does not stop at taking note of human rights violation otherwise the exercise of such function would make no meaning to the victim who would in the final analysis be protected and provided with no relief". In the above case this Court made Orders against the Respondent directing it to take certain measures to ensure performance of its obligations as contracted for under the relevant laws.

In the light of the foregoing analysis, this Court hereby grants the Applicant's reliefs 4, 5 and 6 as prayed for.

DECISION

For the reasons stated above, the Court, adjudicating in a public hearing, after hearing both parties, and their submissions duly considered in the light of the African Charter on Human and Peoples' Rights and other international human rights instruments, and also the Protocol on the Court as amended and the Rules of Court, herby declares as follows:

As regards the Parties:

i. Struck out the name of the 2nd Applicant from the suit upon application by the Applicants;

As to jurisdiction of the Court:

ii. Adjudges that it has jurisdiction to entertain the suit to examine the alleged human rights violation by the Applicant;

As to Locus Standi the Applicant:

iii. Adjudges that the Plaintiff has the *locus standi* in a representative capacity having instituted the action in the public interest irrespective of the anonymity of the victims;

As to merits of the case:

iv. **The Minister's statement** is attributable and imputable to the Respondent and same amounted to existence of an unlawful ban on pregnant adolescent girls from attending school;

v. **There exists discrimination** against pregnant school girls in Sierra Leone occasioned by the institution of the policy (the ban) barring pregnant adolescent girls from attending mainstream schools.

vi. **Consequently,** the Respondent is in breach of its commitments and responsibility under both local and international laws particularly, Articles 2, 3, 17(1), 18(3) & 25 of the Charter; Articles 28(1) of the Convention on the Rights of the Child; Articles 1 & 3 of the Convention against Discrimination in Education and the Court so holds.

vii. **Concerning the institution of alternative school for the pregnant girls,** the establishment of separate school for the pregnant adolescent girls with four (4) taught subjects operating three (3) days a week, not being at par with the main stream schools is equally discriminatory and a violation of the right to (equal) education.

ORDERS:

i) That the prohibitive policy (the ban) be revoked with immediate effect;

ii) That the Respondent State takes steps to abolish the separate school established for the pregnant girls and absorb the already enrolled girls in the main stream schools;

iii) The Respondent State develops strategies, programmes and nation-wide campaigns that focus on reversing negative societal attitudes that support the discrimination and bias against pregnant girls attending school;

iv) The strategies and programmes must enable teenage mothers attend school and/or development of income-generation driven programmes for pregnant girls;

v) The Respondent State integrates sexual and reproductive health into school curricula as this increased knowledge on family planning and contraceptives will support efforts to address the high rate of teenage pregnancy.

AND THE FOLLOWING HAVING APPENDED THEIR SIGNATURES

Hon. Justice Edward Amoako **ASANTE** .....

Hon, Justice Gberi-Be **OUATTARA** .....

Hon. Justice Januaria T. Silva Moreira **COSTA** .....

ASSISTED BY:

Mr. Athanase **ATANNON** - Deputy Chief Registrar .....