

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



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

In the Matter of

**AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL  
REPUBLIC OF NIGERIA**

*Application No: ECW/CCJ/APP/32/2019; Judgment No. ECW/CCJ/JUD/11/21*

***JUDGMENT***

ABUJA

30 APRIL 2021

**AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI ..... APPLICANT**

**V.**

**FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon. Justice Edward Amoako ASANTE	- Presiding
Hon. Justice Dupe ATOKI	- Member/ Judge Rapporteur
Hon. Justice Januaria T. Silva Moreira COSTA	- Member

**ASSISTED BY:**

Mr. Tony ANENE- MAIDOH	- Chief Registrar
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***REPRESENTATION OF PARTIES:***

Femi FALANA, ESQ, SAN	}	Counsel for Applicant
Funmi FALANA, Mrs		
Deji MORAKINYO, Esq,		
Marshal ABUBAKAR, Esq		
David Udo UBONG, Esq		
Washima IORNDER, Miss		

Anne C. Akwiwu (Mrs.)	}	Counsel for Respondent
B.J. Oladipo (Mrs)		


### ***I. JUDGMENT:***

1. This is the judgment 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.

### ***II. DESCRIPTION OF THE PARTIES:***

2. The Applicant, Beauty Igbobie Uzezi who is a Nigerian and former Aircraftwoman of the Nigerian Air Force, lives in Lagos State, Federal Republic of Nigeria and is a Community citizen. (Hereinafter referred to as the "Applicant").
3. The Respondent is the Government of the Federal Republic of Nigeria, a Member State of the Community and State Party to the African Charter on Human and Peoples' Rights. (Hereinafter referred to as "Respondent").

### ***III. INTRODUCTION***

4. The Applicant is seeking relief for the violation of her fundamental human rights arising from alleged rape and sexual assault, torture, cruel, inhuman and degrading treatment meted on her while she was an airwoman in the Nigerian Air Force.
5. She alleges the violation of her rights to physical and mental health, liberty, freedom of movement, fair hearing, non-discrimination, equality before the law, respect for life and integrity, respect of the dignity inherent in a human being

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and to the recognition of legal status and the right to work under equitable and satisfactory conditions, as guaranteed by the provisions of Articles 1, 2, 3, 4, 5, 7, 15, 16 and 19 of the African Charter on Human and Peoples Rights (Charter), and Articles 2, 8 and 23 of the Universal Declaration of Human Rights.

#### ***IV. PROCEDURE BEFORE THE COURT***

6. The Initiating Application dated 29 June 2019, was served on the Respondent on 16 July 2019.
7. The Respondent filed a Notice of Preliminary Objection and its Statement of Defence on 16 August 2019, which were served on the Applicant on 03 September 2019.
8. The Applicant filed a Motion on Notice for an Order granting leave to the Applicant to personally lead evidence, dated 30 October 2019 and this was served on the Respondent on 4 November 2019.
9. On 9 March 2021, the Court heard the oral submissions of the parties, and delivered its Ruling on the Preliminary Objection of the Respondent, whereby it dismissed same.
10. The Court thereafter adjourned the case to 30 April 2021 for judgment.

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## ***V. APPLICANT'S CASE***

### **a) Summary of facts**

11. The Applicant by name Beauty Igbobie Uzezi allegedly aged 19 years old at the time of her enlistment, claimed to be enlisted into the Nigerian Air Force on August 15, 2010 and issued with Service Number NAF10/25157F, having been found medically and physically fit to be conscripted into the Service. Before her ordeal which culminated in her dismissal, she had put in over five years of active and meritorious service at various military formations including the Nigerian Air force Base, Kaduna, the Base Services Wing, Abuja and lastly the Air Service Wing, Ikeja, Lagos on various military assignments.
  
12. On May 17 2011, she alleged to have been brutally raped by one Flight Lieutenant B. S Vibelko who was her superior officer and trainer in the Nigerian Air force. On the day of the incident, she claimed that despite her attempts to resist her rapist, he overpowered her by hitting her head against the wall several times until she fainted while he had his way with her. Due to the injuries she sustained from the attack which led to her losing consciousness, she was rushed to the accident and emergency ward in 345 Aeromedical Hospital Kaduna, where she woke up the following day on admission.
  
13. Her health suffered greatly as a result of the sexual assault; apart from the physical injuries she sustained from the attack, she contracted a sexually transmitted infection, which resulted in a chronic pelvic inflammatory disease and the growth of a solid mass close to her uterus. She also suffered from intermittent fainting spells, severe vaginal discharge, chronic lower abdominal pains, dizziness and swollen vulva.

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14. Furthermore, her male superiors in the Nigeria Air force, rather than investigate and mete out appropriate sanctions against the alleged rapist, subjected her to unprecedented intimidation, victimization and threats to her life. She was constantly locked up in the guardroom, placed on punishment duties, and put through various degrees of punishment including physical assault that caused bruises all over her body. She also received several death threats from other officers of the Nigerian Air force for daring to expose an officer of the Nigerian Air force for raping her.
15. Whilst in detention she suffered torture, degrading treatment and punishment, including beatings and insults by superior officers. Sometimes she fainted in the process of the attacks and at other times she had a fracture, which led to subsequent osteoarthritis on her right hip. On many occasions she was rushed to the hospital for treatment after such punishments have been meted on her. She also claims that she suffered from a psychosomatic disorder, which led to depression.
16. It is the claim of the Applicant that a regimental entry was made into her file, which she sighted in the Personnel Management Group (PMG), Sam Ethnan Base, Ikeja, Lagos. The entry stated that she should never be promoted along with her colleagues and this directive was followed until her unlawful dismissal from the Nigerian Air Force.
17. On 19 October 2015, after being locked up in the guardroom by her squadron leader, he informed her that she had been dismissed from the Nigerian Air Force. This act was contrary to the Armed Forces Act, which require officers to be tried before dismissal.

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18. She claims that even after her purported dismissal, she was chained to her hospital bed for eight days while on admission from 20 October, 2015 to 28 October, 2015, and afterwards she was further detained in the guardroom where she served ninety eight (98) days of imprisonment with hard labour.

19. Also following her dismissal, on 28 October 2015, she was unlawfully evicted from the flat allocated to her and her properties thrown out of the flat.

#### **b) Pleas in Law**

20. The Applicant relies on the following laws:

- i. Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS) 1993 (Revised Treaty);
- ii. Article 1 of the African Charter on Human and Peoples Rights (African Charter);
- iii. Articles 3,4,5,7,15,16,19, of the African Charter;
- iv. Sections 3 (1), (5) and 36(1) (5) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) Third Alteration Act;
- v. Articles 2,8,10,11(1), and 23 of the Universal Declaration of Human Rights;
- vi. Articles 6 (1) and 7 (a), (i), (b) of the International Covenant on Economic, social and Cultural Rights;

#### **c) Reliefs Sought**

21. The Applicant seeks the following reliefs from the Court:




- i. A Declaration that the violent rape and sexual assault of the Applicant on the May 17, 2011 at the Nigerian Air force Base, Kaduna was in flagrant breach and violation of the Applicant's fundamental rights to life, dignity of human person and health as encapsulated in Sections 33 and 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 6 and 16 of the African Charter on Human and Peoples Rights.
- ii. A Declaration that the various arrests, detention and torture the Applicant was constantly subjected to by the Respondent's agents was illegal, unlawful and a flagrant violation of Applicant's fundamental right against torture, inhuman and degrading human treatment, personal liberty and freedom of movement as enshrined in Sections 34, 35, 36 and 41 of the Constitution and Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples Rights.
- iii. A Declaration that the dismissal of the Applicant as a soldier in the Nigerian Air force by the Respondent without arraignment, prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void whatsoever as the act of the Respondent herein constitute a violation of the Applicant's Fundamental Rights to fair hearing as stated in the provisions of SECTION 36 (1), (5) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) Third Alteration Act, Article 7 of the African Charter on Human and Peoples Rights and Articles 8, 10, 11 (1) of the Universal Declaration of Human Rights.

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- iv. A Declaration that the act of the Respondent herein is a gross violation of the Rights of the Applicant to work under an equitable and conducive environment as guaranteed by the provisions of Articles 6 (1), 7(a) (i), (b) of the International Covenant on Economic, Social and Cultural Rights and Article 15 of the African Charter on Human and Peoples Rights.
- v. A Declaration that the act of the Respondent herein is a gross violation of the Rights of the Applicant to health as guaranteed by the provisions of Article 16 of the African Charter on Human and Peoples Rights, Articles 6(1), 7(a) (i), (b) of the International Covenant on Economic, Social and Cultural Rights and Article 15 of the African Charter on Human and Peoples Rights.
- vi. A Declaration that the act of the Respondent is a gross violation of the Applicant's fundamental rights to work and freedom from unemployment as expressly guaranteed by the provisions of Article 23 of the Universal Declaration of Human Rights.
- vii. An Order of this Honourable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicant her monthly salary and other allowances from the month such sum is last paid until the date judgment is enforced in this suit.



- viii. An Order of this Honourable Court directing the Respondent, their agents, organs, privies, servants or by whatsoever name called to pay over to the Applicant the sum of \$10, 000,000. 00 (Ten Million Dollars) only as general damages for the physical, psychological and mental torture suffered by the Applicant as a result of the various human rights violations she was subjected to by the Respondent.
- ix. An Order of this Honourable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicant the sum of \$20, 000,000.00 (Twenty Million Dollars) only as aggravated and punitive damages that will serve as a deterrent to the Respondent.
- x. An Order of this Honourable Court directing the Respondent to pay over to the Applicant the sum of \$500, 000.00 (Five Hundred Thousand Dollars) only being the solicitor's fees and other incidental cost.
- xi. An Order of this Honourable Court directing the Respondent, its agents, organs, servants, privies or by whatsoever name called to immediately reinstate the Applicant to the rank her contemporaries in the Nigeria Air force currently occupies.

Or in the alternative to relief 4.11 (xi),

- xii. An Order of this Honourable Court directing the Respondent, its agents, organs, servants, privies or by whatsoever name called to convert the purported dismissal of the Applicant to retirement at the rank her

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contemporaries in the Nigeria Air force occupies as at the time of enforcement of the Judgment.

## **VI. RESPONDENTS' CASE**

### **a) Summary of facts**

22. The Respondent in its defence denies each and every allegation of facts contained in the Applicant's narration of facts save for those expressly admitted and puts the Applicant to the strictest proof of the allegations.
23. Regarding whether the Respondent violated the rights of the Applicant as enshrined in the African Charter, the Respondent states that the Applicant's claim is based mainly on the violation of Article 6 of the African Charter, which provides that "*Every individual shall have right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.*"
24. The Respondent argues that this provision is not absolute which means that a person may be detained in accordance with the provisions of previously laid down laws. Its contention is that the law under which a person is arrested, detained and/or prosecuted must be valid and in force, before or at the time of such arrest, detention and/or prosecution.





25. The Respondent argues that when the alleged incident of alleged sexual abuse and other violations happened to the Applicant as an Aircraft woman, she was subject to the Armed Forces Act. Section 77 of the Act provides,

*“A person subject to service law under this Act who has unlawful carnal knowledge of a woman or girl without her consent or with her consent obtained –*

*a) By force or by means of threat or intimidation... is guilty of an offence under this section and liable on conviction by a court martial to imprisonment for a term not exceeding fourteen years or any less punishment provided by this Act.”*

26. Based on the above stated provision of the Act, the Respondent states that both the alleged perpetrator and the Applicant are subject to the service law and should be dealt with in accordance with the same law. She can therefore not seek relief from this Court for the alleged violation of her rights, especially since the Armed Forces Act provides for the offence of rape and prescribes punishment for the crime.

27. The Respondent submits that it is not in breach of the provisions of the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights as alleged.

28. As regards the whether the Applicant is entitled to the reliefs sought in her Application, the Respondent asserts that the answer is in the negative. They argue that the assessment of damages or compensation must be based on credible, cogent and sufficient evidence placed before the Court by a claimant,





which the Applicant has not provided, as her claim is tainted with obvious falsehood.

29. The Respondent submitted that there are no facts before the Court upon which the declarations or orders as claimed by the Applicant can be awarded, since the Respondent has not done anything that is unconstitutional to warrant any of the declarations and orders sought by the Applicant.

30. It is further submitted that the burden of adducing evidence to justify the award of such declarations and orders rests on the Applicant, which she has not discharged but merely fabricated stories against the Respondent. Further, the names mentioned in the Applicant's Application as perpetrators of the violations against her, do not include the Respondent and the Applicant did not deem it relevant to join these individuals to the suit before the Court.

31. In concluding, the Respondent urges the Court to dismiss this Application with deterring costs, as it is frivolous and without merit.

**b) Pleas in law**

32. The Respondent based its defence on the following laws:

- i. Articles 2, 4, 5, 6 & 7 of the African Charter;
- ii. Article 32 (4) and 35 of the Rules of the Community Court of Justice, ECOWAS;



- iii. Article 9 (4) of the Protocol (a/P1/7/91) on the Community Court of Justice and Article 10 (d) of the Supplementary Protocol (A/SP.1/01/05) on the Court of Justice;
- iv. Revised Treaty of the Economic Community of West African States 1993;
- v. Sections 33 and 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended);
- vi. Section 131 of the Evidence Act of Nigeria.

**c) Reliefs sought**

33. Apart from urging the Court to dismiss the Application with costs, the Respondent did not seek any reliefs.

**VII. JURISDICTION**

34. Having delivered its Ruling on the Preliminary Objection of the Respondent on the jurisdiction of the Court on 9 March 2021, the Court has competence to adjudicate on the Application and so holds.

**VIII. ADMISSIBILITY**

35. The Court holds that the Application is admissible in accordance with Article 10 (d) (i) and (ii) of the Supplementary Protocol, which provides, "*Access to the Court is open to... individuals on application for relief for the violation of their human rights; the submission of the application for which shall: i) not be*



*anonymous; nor ii) be made whist the same matter has been instituted before another International Court for adjudication.”*

## **IX. MERITS**

36. The Applicant's claim hinges on the following violations:

- i. Allegation of rape in violation of Articles 5 and 16 of the African Charter;
- ii. Allegation of torture and other cruel and inhuman treatment in violation of Article 5 of the African Charter;
- iii. Allegation of the right to life in violation of Article 4 of the African Charter;
- iv. Allegation of the violation of the right to liberty in violation of Article 6 of the African Charter;
- v. Unlawful dismissal in violation of Article 15 of the African Charter and Article 23 of the Universal Declaration of Human Rights.

**a) *On the allegation of rape violating Article 5 of the African Charter.***

### **Analysis of the Court**

37. The Applicant's case is to the effect that on May 17, 2011 she was sexually assaulted and brutally raped and de-flowered by her superior officer in the Nigerian Air force, one Flight Lieutenant B. S Vibelko. She attached Annexure A which includes medical reports to confirm the alleged rape and breach of her virginity. She therefore sought a declaration that the violent rape and sexual

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assault violated her fundamental rights to life and dignity of the human being contrary to Articles 4 and 5 of the African Charter on Human and Peoples Rights.

38. The Respondent on its part denies all the allegations of the Applicant putting her to the strictest proof of all she has claimed and further contends that the Applicant has not been able to establish the allegations canvassed by her and urges the Court to dismiss the Application.

39. The Court notes that the Applicant sought a declaration that her rape is a violation of her right to respect to dignity inherent in the human contrary to Article 5 of the Charter. The Court is not unmindful of the fact that Article 5 while guaranteeing human dignity for all, proceeds to prohibit torture, cruel, inhuman and degrading punishment or treatment, same being a catalyst to disrespect of the right to dignity. In other words a violation of the right to dignity is precipitated by torture. In the instant case, rape being an act of torture violates the right to dignity. In that wise, an analysis of the nexus between rape and the torture is imperative.

40. In examining rape as a violation of Article 5 of the Charter, it is imperative to understand what constitute rape or sexual violence. Rape is recognised as a crime under national and international law. Its definition is varied but reflects similar elements. The landmark case defining rape under the international jurisdiction is by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Kunarac* case which states as follows:

*“The Trial Chamber understands that the actus reus of the crime of rape in international law is constituted by: the sexual*

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*penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim."*

PROSECUTOR V KUNARAC, KOVAC AND VUKOVIC IT-96-23-T & IT-98-30/1-T (22 FEBRUARY 2001) UN INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, PARAGRAPH 460.

41. As stated supra, rape is well recognised as a crime across national and international jurisdictions. However, it is apt to state at this point that with regard to legal framing, rape is not generally dealt with separately in international human rights instruments as a human rights violation. However, the evolution of rape as a human right began with the prohibition of rape during warfare under international humanitarian law, the subsequent designation of rape as a war crime and a crime against humanity under international criminal law, and under regional human rights law is integrated into the development of norms relating to gender-based violence against women and primarily framed within the principles of non-discrimination and inequality. Furthermore it was framed through treaty provisions relating to torture and cruel, inhuman degrading treatment and privacy and family rights. Conclusively rape is now conceptualised as a human rights violation and variously classified in international human rights.



42. Consequently, rape being a sexual assault falls within the confines of and is easily classified as sexual violence with the attendant attributes of sexual violence. Accordingly, the definition of sexual violence is intertwined with rape thus giving a common indices of the ingredients with sexual violence as seen below;

*“Sexual violence means any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act on a third person. These acts are considered as nonconsensual when they involve violence, the threat of violence, or coercion. Coercion can be the result of psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or the inability of an individual to freely consent. This definition must be applied irrespective of the sex or gender of the victim and the perpetrator, and of the relationship between the victim and the perpetrator.”* THE GUIDELINES ON COMBATING SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS.

43. With the understanding of the concept of rape and sexual violence, the Court will now proceed to establish the connection with torture and ill-treatment in its global allegation as a violation of dignity and thus of Article 5.

44. Torture as defined by Article 1 of the Convention Against Torture (CAT) states  
*“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,*



*punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

45. The Court also summarized the definition of torture thus,

*“Torture can simply be referred to as inhumane acts causing severe pain or suffering, or serious injury to the body or to mental or physical health by a public officer with intent amongst others to obtain confession, or to punish the victim.”* HON. JUSTICE S. E. ALADETOYINBO v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/20 PAGE13.

46. Following the understanding that rape impacts several human rights, it has been recognised as a form of torture and this was confirmed by the Appeals Chamber in the *Kunarac* case when it stated that *“Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.”* PROSECUTOR V KUNARAC, KOVAC AND VUKOVIC IT-96-23-T & IT-98-30/1-T (22 FEBRUARY 2001) UN INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, PARAGRAPH 151.

47. Likewise, the Inter American Court on Human Rights stated as follows,





*“Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them. RAQUEL MARTÍ DE MEJÍA V. PERÚ, CASE 10.970, REPORT NO. 5/96, INTER-AM.C.H.R., OEA/SER.L/V/IL91 DOC. 7 AT 157 (1996).*

48. The abovementioned international jurisprudence have also established that rape is an act that causes severe pain and suffering to the victim and amounts to torture. The Court does not see reason to depart from international jurisprudence in classifying the rape of the Applicant as an act of torture.
49. Furthermore, the Court notes that during the rape incident, the Applicant was allegedly beaten and her head bashed against the wall several times leading to her loss of consciousness. Annexure A, which is the medical report submitted by the Applicant in support of the rape, has a notation of “*sexual assault with genital laceration complicated by head injury...*” This report corroborates the Applicant’s claim of sexual violence as well as battering of her head against the wall. The Court finds that the act of pounding her head against the wall leading to the head injury also amounts to torture.
50. With an understanding of rape and sexual violence amounting to torture and ill-treatment, it is now ripe to examine the allegation of the Applicant that her





violent rape and sexual violence is a violation of her right to respect for human dignity as provided in Article 5 of the African Charter which states as follows;

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”*

51. The above provision is comprised of two separate but interrelated sets of phrases as follows: *“Respect for Human dignity”* and *“prohibition of torture and other cruel, inhuman and degrading punishment and treatment”*. The Court has analysed the interconnection between rape and torture, it will now examine the facts presented to establish whether rape being an act of torture impacts on the Applicant’s respect of dignity inherent in a human being.

52. The term dignity is derived from the Latin word *‘dignitas’* meaning *worth*, (Mairis.1994; Clark, 2010) while the Oxford Dictionary defines it as “the state or quality of being worthy of honour or respect”. In understanding the notion of dignity, the comments below of the former United Nations Special Rapporteur on Torture is instructive:

*“Human dignity is the main philosophical foundation of human rights, as expressed in the Charter of the United Nations, the Universal Declaration of Human Rights and many other documents. The concept of human dignity is meant to distinguish human beings from other creatures, notably animals. It underlines the uniqueness of human beings among all*

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*creatures, above all their free will, individual autonomy and capability of independent decision-making based on reason and free moral choice...*”

53. In elaborating the consequences of acts of indignity, he stated that,

*“In my opinion, it is the experience of absolute powerlessness which creates the feeling among the victims of certain gross human rights violations to have lost their dignity and humanity. As the slave holder exercises absolute power over slaves, the torturer, the rapist, the genocidaire, the trafficker exercises absolute power over their respective victims. Many victims of torture, rape, trafficking, female genital mutilation, corporal punishment and inhuman prison conditions whom I interviewed in my function as Special Rapporteur on Torture in all world regions had reached a stage in which they regarded death as a relief compared to the suffering of being further dehumanized.”* MANFRED NOWAK (LUDWIG BOLTZMANN INSTITUTE OF HUMAN RIGHTS, UNIVERSITY OF VIENNA; U.N. SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT).

54. In narrating her ordeal the Applicant averred that she was violently manhandled, beaten, her head pounded against the wall and being a virgin had to endure excruciating pain as she was raped leading to her loss of consciousness. This was captured in the written submission of counsel on her behalf in paragraph 2.8 of the Initiating Application that *“Flight Lieutenant Vibelko over powered her, hitting her head against the wall several times in the process and she eventually fainted while he had his way.”*

*Heere*



*CA*

55. Rape not only invades the inner recess of one's privacy shredding the victims' dignity thus rendering them worthless, but creates a vulnerability of fear and helplessness. These emotions were captured by the European Court of Human Rights wherein it stated,

*"...rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally."* AYDIN v. TURKEY ECHR APPLICATION NO. 57/1996/676/866, JUDGMENT OF 25 SEPTEMBER 1997.

*Proof of rape*

56. While it is incontestable that rape is an affront on the human dignity which the Applicant allege, she is nevertheless obliged to prove not only that she was raped also that Flight Lieutenant B.S. Vibelko was the perpetrator. Its trite law that he who alleges must prove the facts.

57. The Court recalls the narration of the Applicant who allege she was 19 years old when she was raped. Specifically she stated that on 17 May 2011 after she was lured into the apartment of Flight Lieutenant B.S. Vibelko, located within the NAF Base in Kaduna, he forced himself unto to her and following several hours of physical struggle, severe beatings including hitting her head against the wall, she succumbed to his entry into her resulting in the ensuing loss of consciousness. She was thereafter taken to the 345 Aeromedical hospital NAF in Kaduna where she received medical treatment.

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58. The medical report in support of the Applicant's claim marked "Annexure A" with Service Number 10/25157 attached to her name - Igbogie Beauty- states as follows:

*"This patient was wheeled into the ward at 13.30 hrs by an attendant from A/E... patient kept mute and groaning in pain...V/E not done but small bleeding observed and bruises from the vaginal orifice." ... "to see a 19 year old girl who was said to have been sexually assaulted about 48 hours ago... Was said to have been hit on the head and looked not well oriented. No useful information could be extracted as patient was drowsy..."* The report also stated *"Sexual assault with genital laceration complicated by? Head injury..."*

59. In addition, the Court notes the additional medical reports from the Pathological Laboratory of the Aeromedical Hospital NAF Kaduna, dated 18/5/11, 19/5/11, 20/5/11 respectively (Annexure A), a few days after the incident, with clinical diagnosis as "Sexual assault", "Sexual Violation" and "Rape" "being managed for sexual assault".

60. Having not been controverted by the Respondent, Annexure A is convincing enough to enable the Court make a determination that the Applicant was subjected to acts amounting to rape and the Court so holds.

*Identity of perpetrator- Suspect named*

61. Having establish that she was raped, it is essential to also prove the identity of the perpetrator of the act. In paragraph 2.8 of the Applicant's written submission and her oral testimony, the Applicant named Flight Lieutenant Vibelko - her instructor at the training school as the officer who raped and deflowered her.



However, the Applicant did not provide further proof linking the alleged rape to the said Flight Lieutenant Vibelko.

62. The Court notes that the crime of rape is difficult to prove without corroboration by an eye witness or matching semen sample from the vagina of the victim with that of the alleged perpetrator. No evidence of either was submitted by the Applicant. Therefore, in the absence of any corroborating evidence, the Court cannot with certainty find that it was Flight Lieutenant Vibelko who raped the Applicant.

63. However, the fact is uncontroverted that the Applicant was raped within the NAF Base in Kaduna and due to the fact that the Air Force Base is a military restricted area that is not open to the public. Furthermore, the Applicant was treated in the NAF Hospital in Kaduna. This raises a high probability that the acts was carried out by a NAF officer. The relevance of the actual identity of the perpetrator thins out in the light of the obligation the Respondent under the Charter to ensure the protection of the rights therein.

64. In order to come to a finding on the identity of the perpetrator the Court will at this point expatiate on the responsibility of the State to bring into proper perspective the possible culpability of the Respondent in this wise

65. States have the responsibility under international human rights law to respect, protect and fulfil the human rights in treaties that they are parties to. In this wise as it relates to sexual violence, States are obliged to take measures to refrain from violating the rights of individuals; prevent sexual violence by non-state actors and to investigate and prosecute all allegations of sexual violence and

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enact legislation to further ensure protection of individuals within their territory. In this regard, the ACHPR Guidelines on Sexual Violence (General Principles on Obligation of States) provides,

*“7) States must take the necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including sexist and homophobic discrimination, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility, irrespective of their source.”*

*“9) States must take measures to guarantee access to justice for all victims of sexual violence, including in rural areas. States must ensure that investigations into acts of sexual violence and the prosecution of the perpetrators are carried out: without unjustified delays; independently, impartially and effectively; in a manner that will lead to the identification and sentencing of the perpetrators.”*

66. In the same vein concerning the State responsibility to investigate and prosecute human rights violations, the Court has this to say;

*“The duty of due diligence in international law enjoins a State to take action to prevent human rights violations, and to investigate, prosecute and punish the perpetrators when they occur. The State’s failure or omission to take preventive or protective action itself represents a violation of basic rights on the State’s part, which is because the State controls the means*





67. The above jurisprudence places an undeniable responsibility on States to prevent sexual violence from occurring, and to investigate and punish all cases of human rights violation, including rape which is a violation of Article 5 of the African Charter. This responsibility is not negated even when such acts are attributed to non-state actors, which is not the case in the instant Application that involves an agent of the State, as acts of State agents are attributed to the State.

68. In this regard the Court recalls its Ruling on the Preliminary Objection of the Respondent on cause of action, which it dismissed, by reaffirming that the Respondent shall be held liable for acts of violation of human rights perpetrated by its agents, when it held thus,

*"In view of the facts that a Member State as an abstract entity must necessarily act through organs made of human beings, its responsibility when questioned must a fortiori encompass the organs acting on its behalf". Consequently it follows that due to its obligations highlighted supra, the State will be responsible for the acts and omissions of their agents, institutions or organs acting in their official capacity, even if such acts were committed outside of the scope of their official authority or in violation of domestic laws. Thus, where agents of a state violate the rights of an individual(s) these violations will be imputable to the State whether it was sanctioned by it or not, thereby establishing its international responsibility for the acts or omissions."*

AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA  
RULING NO. ECW/CCJ/RUL/01/21.



This is consistent with the decision of the Court below:

*“For the purpose of International law, the State consists of different organs with different functions and is treated as a unit so that the action of any of these organs is considered the action of that single legal entity...In the light of the above the Defendant is liable for the wrongful acts of its agents.” COL. MOHAMMED SAMBO DASUKI (RTD) V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/23/16 PAGE 28.*

69. The Court notes that the Applicant was treated for the rape, sexual violence and depression in the NAF Hospitals in Kaduna and Lagos. The overwhelming evidence corroborating the claim that she was raped which was acknowledged via the several medical reports issued by the NAF hospitals is sufficient to raise a red flag to the authorities of NAF. It is intriguing that no measures were taken to investigate the alleged rape and to prosecute the alleged perpetrator.

70. In compliance with their obligation to prevent human rights violation, a Standard Operating Procedures for rape cases should be available at its medical facilities, which guide actions to be taken when such cases are presented at these facilities. These measures includes first aid treatment, collecting evidence like semen samples, providing prophylactic and escalating such cases to other investigating authorities to enable prosecution of the perpetrator. See *ACHPR Guidelines on Combating Sexual Violence and its Consequences (Supra)*.

71. While the Court acknowledges that the Applicant was tested and received treatments, the Court observes that no measure was taken to preserve the semen



sample and to escalate the case to the authorities for investigation, despite several notations of “sexual violence” and “rape” on the Applicant’s medical reports, examination sheets and laboratory forms.

72. The General Comment 2 below, sums up the consequence of the failure of State to investigate and prosecute torture and sexual violence and allied violations.

*“The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. **The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.**” (Emphasis ours)*

GENERAL COMMENT 2, UN DOC CAT/C/GC/2. 24 JANUARY 2008, PARAGRAPH 18.





73. The Court adopts in its entirety the reasoning in the General Comment above and find that the NAF authorities and by implication the Respondent has failed to exercise due diligence to intervene to stop, sanction and provide remedies to the Applicant thereby encouraging impunity.
74. Having found the Respondent liable by failing in its responsibility to investigate the alleged rape of the Applicant despite overwhelming evidence that she was raped within the NAF Base, it behooves on the Respondent to carry out appropriate investigation into the alleged rape of the Applicant, and the Court so orders.
75. The Court therefore finds that the Respondent is responsible for the rape of the Applicant an act which constitute torture with the overriding effect of disrespecting her dignity contrary to Article 5 of the African Charter. The Court therefore declares that the rape and sexual violence meted upon the Applicant by the Respondent is a violation her right under Article 5 of the African Charter.
76. In concluding its finding on the allegation of the Applicant that the Respondent violated her human dignity by the rape and sexual violence meted on her, the Court painfully recaps the narration of the facts of this case again which it summarises as follows; an adult man, behind a forced closed door violently had sexual intercourse with a teenager, accompanied by severe battering, in the course of a long drawn resistance, the perpetrator banged her head several times on a hard surface, with an ensuing head injury, loss of consciousness and eventual surrender in helplessness.

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77. These facts poses a concern to the Court as to how much dignity and self-esteem is left for this teenager after the above incident? Additionally, how can the Applicant start her adult life without a perpetual trepidation for men? The answer is not farfetched to any right thinking member of the society.
78. The Act above is reflective of a human being reduced to an animal! Even animals do not engage in brute force while mating no matter how uncooperative the partner is; and if they do, it is in order after all, they are animals with far less incomparable intellect and self-worth than human beings.
79. It is on this note that the Court condemns in the strongest terms the impunity displayed by the NAF authorities in the grievous violation of respect to the dignity of the Applicant and reiterates that the guarantee of the right of every person to the respect of the dignity inherent in human beings is sacrosanct and not subjected to exceptions.
80. The Court further condemns the NAF authority and by implication the Respondent for failing to take a cue from the medical reports emanating from the repeated visits of the Applicant to the hospital which authenticated rape and consequential infection and depression. This is more so because the depression continues to be treated for years thereafter.
81. Since the Court has found that the alleged rape of the Applicant can only be perpetrated by a NAF official, in consonance with the liability of Member States for acts of their agents, it therefore holds that the Respondent is liable for the

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rape of the Applicant with the ensuing violation of her right to respect of human dignity and *a fortiori* a violation of Article 5 & 1.

**b) *On allegation of violation of right to life under Article 4 of the Charter.***

***Analysis of the Court***

82. The Applicant alleged that the her rape, sexual assault as well as the arrests, detention and torture are a violation of her right to life guaranteed under Article 4 of the Charter. Article 4 provides thus,

*“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”*

83. This right prohibits the extinction of a life other than for reasons provided. It is premised on the fact that the victim of such violation is dead. A living person cannot therefore claim a violation of the right to life. The Applicant is very much alive, a fact the Court can confirm having watched her testify on the last day of the hearing of this case. This therefore implies that the alleged rape, detention and torture did not kill her. Consequently, the Court finding no substance in this allegation, hereby dismisses it and holds that the Respondent is not in violation of Article 4 of the African Charter as regards the right to life of the Applicant.





*c) On other allegations of torture, cruel, inhuman and degrading punishment and treatment under Article 5 of the Charter*

**Analysis of the Court**

84. The Applicant further allege that after the rape incident she was tortured by senior officers of the NAF several times between 2011 until 2015 when she was dismissed, as punishment for trying to expose Flight Lieutenant Vibelko for raping her.
85. The Respondent denies the allegations of the Applicant as being fabricated as there is no proof in support of her claims. The Respondent further denies liability for any of the acts committed against the Applicant as the perpetrator are individuals who are not the same as the Respondent. They also state that there is no law in Nigeria that condones the acts alleged by the Applicant.
86. The Court notes that the claim of torture revolves around events surrounding the periods of the Applicant's detentions and in the course of her duties, which were post rape period. She alleges she was tortured by her senior officers as punishment for trying to expose their colleague who raped her.
87. From the definition of torture by the CAT earlier cited, it envisages that certain elements must be present before torture can be established which are a) the acts must cause severe pain and suffering to the victim b) it was carried out by a public officer c) the purpose is to punish the victim or obtain a confession from him. The Court will now proceed to examine the acts complained of in line with these elements.

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a) *Severe pain and suffering*

88. The Court notes the various acts in paragraphs 2.2, 2.16, 2.21, 2.22, 2.24, 2.25, 2.27, 2.29, 2.30, 2.31 and 2.32, of the Initiating Application which the Applicant alleged amounts to torture. This includes severe beating, kicking, being chained to her bed in the hospital, death threat, insults, being dragged on the ground while in and out of the guardroom. Others include one occasion where she was mandated to stay on guard post despite her high fever leading to severe dehydration and eventual loss of consciousness. She was also locked in the guardroom for 10 days from 1 October 2015 to 10 October 2015, where she *“suffered from further severe dehydration and was at the point of dying with her legs frozen, her mouth bent and she was profusely foaming from the mouth.”*

89. She also stated that she was rushed to the hospital where she was handcuffed to the bed for 8 days despite the fact that she was critically ill and she feared that she might lose her life.

90. It is not in doubt that severe pain and suffering capable of causing physical and mental anguish will be generated by these acts thus constituting an element of torture. In this regard the Court recalls its holding in a previous case where it stated thus,

*“The relevant points in understanding the nature of torture are that the act complained of need not be physical with accompanying visible signs, it admits of other acts with the capacity to affect mental faculties of the victim by causing amongst others severe mental delusion coupled mostly with, fear, anguish and suffering.....”* HON. JUSTICE S. E. ALADETOYINBO v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/20 PAGE 21.



91. This element of severe pain and suffering having been indicated by the Applicant must nevertheless be proved and this will be examined ahead of other components of torture listed above.

*Proof of torture*

92. While these acts as alleged constitutes acts that can be classified as torture, cruel, inhuman or degrading punishment or treatment, however, the Court has held in several decisions that facts alleged must be proved and the burden of proof lies on the Applicant who alleges them. The Court reiterated that,

*“The initial burden of proof thus rests on the Applicant who is to establish through evidence, all the requisite elements to succeed in his case. If that burden is met, the burden of proof then shifts to the Respondent who now has to lead evidence in rebuttal of the Applicants’ assertions by preponderance of evidence.”* CHIEF DAMIAN ONWUHAM & 22 ORS V. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/22/18, PAGE18.

93. This proof can include medical reports and other similar documentation or corroboration of the facts. In this regard, the Court stated thus,

*“In the discharge of this burden the Applicant is required to prove every material fact as alleged by him. Given the seriousness of the allegation of torture, the Court will expect the Applicant to prove the allegation of torture by way of independent medical evidence to establish torture as alleged or through independent credible witnesses whose pieces of evidence are capable of corroborating*

*Heene*  
 



94. While the Court has concluded that elements of torture have been indicated, it needs to further engage the Applicants narration to determine whether the various acts complained of are substantiated. In other words that the Applicant has to prove that she was tortured. The Court reproduces below the averment of the Applicant in her application as it relates to the allegation of torture to enable an examination as to whether each of these alleged acts of torture has been proved.

- a. *Paragraph 2.21- The Applicant avers that she was subjected to severe beating, torture, degrading treatment in the guardroom.*
- b. *Paragraph 2.22 - The Applicant aver that in October, 2015, during one of such beating and torture, she was booted and kicked on the waist by MWO Magaji subsequent upon which she passed out and fainted.*
- c. *Paragraph 2.29 - That even after her purported dismissal, the Applicant was still handcuffed to her sick bed for eight days commencing from October 20, 2015 to October 28, 2015.*
- d. *Paragraph 2.30 - The Applicant avers further that after her purported dismissal, she was bungled (sic) to the guardroom to serve 98 days imprisonment with hard labour (IHL) where she was constantly tortured, beaten and humiliated by four Air police personnel at the*

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*Provost Squadron Sam Ethan Base, Ikeja under the instruction of Squadron leader Ilori.*

- e. Paragraph 2.31- The Applicant avers that she was subjected to unimaginably severe beating, torture, degrading treatment in the guardroom.*
  
- f. Paragraph 2.32 - The Applicant further avers that during one of the torture sessions, she was kicked on the waist by MWO Magaji, which resulted in the fracture and subsequent osteoarthritis of her right hip. The Applicant pleads the Medical report and scan X-ray in proof of this averment marked ANNEXURE P.*

95. From its records the Court notes that allegations *a, b d, & e* are not supported by any evidence and are consequently dismissed.

96. With regards to allegation (*c*) referring to her being handcuffed to the hospital bed, the Court is of the opinion that such action carried out on a person who has not committed a crime and thus not in a custodial detention is a degrading and inhuman treatment and a violation of Article 5 of the Charter. The Applicant in proof of this, submitted Annexure L showing a picture of someone in that described situation. Unfortunately, the Applicant did not speak to this document during her oral testimony by laying it before the Court with narratives that will establish her identity in the annexure. Furthermore, the said Annexure L being blurred and indistinct, the Court is unable to connect the person therein to the Applicant. Consequently, the Court holds that the allegation that the Applicant was tortured by handcuffing her to the hospital bed has not been proved.



97. With regards to allegation (f) to the effect that one MWO Magaji tortured her by kicking her resulting in a fracture and subsequent osteoarthritis of her right hip, the Applicant submitted Annexure P, a medical and X-ray report from the Matcom Medical Diagnostic Services, Lagos. On perusal of the said report, the Court notes that it indicated that “no fracture line is seen”, “Normal pelvic brim outlines and “Moderate degenerative changes of the right hip joint is noted”. Without the advantage of a medical expert which was not provided, the understanding of the Court is that Annexure P does not support the claim that the named Magaji subjected her to torture.

98. In light the above analysis, since the Applicant failed to prove she was subjected to pain and suffering, an examination of the other elements on identity of the perpetrator and the purpose of the torture becomes otiose same being devoid of essence. The Court therefore finds that the Applicant has failed to prove that all the alleged ill-treatments post the rape incident amount to torture, cruel, inhuman and degrading punishment and treatment in violation of Article 5 of the Charter.

99. Consequently the Court holds that the Respondent is not in violation of Article 5 as herein alleged.

**d) *On allegation of violation of the right to health under Article 16 of the Charter.***

**Analysis of the Court**

100. The Applicant alleges that due to her rape and the sexual violation she endured, she suffered from sexually transmitted diseases, psychosomatic





disorder which led to severe depression for which she was being treated, as such her right to health was violated by the Respondent contrary to the provisions of Article 16 of the African Charter. She supports her claim with a medical report marked “Annexure M”

101. Apart from the general denial, the Respondent did not make any submission in response to the allegation under this head.

102. Article 16 of the Charter provides,

*“Every individual shall have the right to enjoy the best attainable state of physical and mental health.*

*2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”*

103. In addressing the right to health, it is important to understand the import Article 16 above. The right guaranteed is the enjoyment of the best attainable state of physical and mental health. It should not be misunderstood to mean the right to be healthy. States are not obligated to ensure that all individuals are fully healthy. While the right to health is associated with access to health care and the building of hospitals, it extends further. It includes a wide range of factors that can help individuals lead a healthy life called “underlying determinants of health”. They include: Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and information; Gender equality.



104. The right to health also contains freedoms, including the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.
105. Additionally, the right to health contains entitlements, include: The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; Access to essential medicines; See *FACT SHEET NO 31 ON THE RIGHT TO HEALTH OF OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS*.
106. The above elaborates the fundamentals of the right to health, and it is undoubtable that health is a human right. It therefore takes on the universality, interdependence, indivisibility and interrelatedness inherent in human rights. This means that violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa. For this reason it is dependent on, and contributes to, the realization of many other human rights. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.
107. The above analysis sets the stage for the Court to examine the allegation of the Applicant that her rape and sexual violence violated her right to health. She claimed that after the incident of rape, she was diagnosed with depression. A medical report to support same from 445 Nigerian Airforce Hospital Ikeja, Lagos, dated 28 October 2015 (Annexure M) states as follows:



*“The above named airwoman is a known patient of this facility who is being managed for major depressive illness. Last episode of illness was on 20 October 2015 when she was brought into the Emergency unit on account of mutism and tiredness.*

*She was reviewed by the Consultant Psychiatrist who made an assessment of Severe Depressive Disorder for which she was admitted and managed accordingly. She was discharged home on 27 October 2015 in stable condition and was advised to continue tablet setralline, diazepam and megafit.”*

108. The effect of rape on the health of its victim was captured by the earlier stated holding of the Inter American Court on Human Rights as follows,

*“Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them. (SUPRA).*

109. Amnesty International also records the effects of rape thus:

*“Studies of the physical and psychological harms caused by rape and sexual violence are severe and long-lasting. Medical conditions caused by physical injuries sustained during rape and sexual violence, include gynaecological injuries, sexually*

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*transmitted infections, and infertility. Pregnancy resulting from rape, the difficulties of seeking an abortion, or the challenges of raising a child born of rape, add to the pain and suffering inflicted upon girls and women of child-bearing age who are targeted for rape. The psychological injuries include depression, post-traumatic stress, and suicidal thoughts."*

AMNESTY INTERNATIONAL DOCUMENTS: "RAPE AND SEXUAL VIOLENCE: HUMAN RIGHTS LAW AND STANDARDS IN THE INTERNATIONAL CRIMINAL COURT" AMNESTY INTERNATIONAL PUBLICATIONS 2008 PAGE 40-41; "JAPAN: STILL WAITING AFTER 60 YEARS: JUSTICE FOR SURVIVORS OF JAPAN'S MILITARY SEXUAL SLAVERY SYSTEM." AI INDEX ASA 22/012/2005, 28 OCTOBER 2005, PAGES 13-15.

See also AYDIN V TURKEY JUDGMENT (SUPRA) PARAGRAPH 83.

110. In the instant case, the claim of the Applicant of the impact of the rape incident on her health sits with some of the medical conditions listed in the above case. Medical reports show that the Applicant suffered from *Severe Depressive Disorder* that continued for more than four years after. Medical reports also show that she contacted sexually transmitted disease arising from the rape incident- Annexure C. Also a medical report dated 29 May 2011 support that she was "Having flash backs" "worried and troubled" and "sad"- Annexure B.

111. The above, points to the corollary between rape amounting to torture - a violation of Article 5 and the consequential depression reflective of a violation of right to health. Indeed the violation of the right of the Applicant under Article 5 of the Charter, impacted her health resulting in severe depression which was being managed even four years after the rape incident as recorded in above

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annexure M. The Court is therefore not constrained to find that the rape of the Applicant resulted in the medical conditions alleged including severe depression.

112. Having concluded that the rape impacted on the health of the Applicant, thus in examining the liability of the Respondent in this wise the Court notes that as with all human rights, Member States are clothe with obligation to respect, protect and fulfil human rights that they have committed to under Article 1 of the African Charter. This commitment no doubt applies to their obligation under the right to health. In this wise, the obligation to *respect* obligates them to refrain from acts that interfere directly or indirectly with the right to health. This includes refraining from imposing discriminatory acts that affect the health of individuals.

113. On the obligation to *protect*, States are obliged amongst others to prevent third parties from carrying out practices that interfere with the right to health.

114. The obligation to *fulfil* obliges States to take measures including legislative, judicial, budgetary and other measures to fully realise the right to health. SEE *FACT SHEET NO 31 ON THE RIGHT TO HEALTH OF OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS*.

115. In the instant case, the obligation of the Respondent to protect, requires that the authorities of NAF and by extension the Respondent is prevented from carrying out practices that interfere with the right to health of the Respondent. The Applicant, before her brutal violation by a NAF personnel was an otherwise healthy young girl fit enough to be enlisted in the NAF. The health conditions

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complained of are not natural or self-inflicted but emanate from rape of the Applicant by a NAF officer.

116. The Court is therefore unable to come to any other conclusion than to find that the Respondent violated the Applicant's right to health contrary to Article 16 of the African Charter and so holds.

***e) On allegation of the violation of the right to liberty under Article 7 the Charter***

**Analysis of the Court**

117. The Applicant alleged that she was detained in the guardroom several times.

The paragraphs in the Initiating Application detail those occasions as follows;

- a) Paragraph 2.13, stated that she was locked up in the guardroom for ten (10) days;
- b) Paragraph 2.20 states that Squadron Leader Ejiga ordered her imprisonment for fourteen (14) days with hard labour;
- c) Paragraph 2.25 states that Squadron Leader Ilori mobilized some Air Policemen to the hospital where she was on admission, to take her to the guardroom as being in the hospital will expose the NAF.
- d) Paragraph 2.30 states that after her purported dismissal, she was bungled (**sic**) to the guardroom to serve ninety eight (98) days imprisonment with hard labour.

118. In response, the Respondent argues that the allegation of the Applicant is based on the violation of Article 6 of the African Charter, which is not an absolute right



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but subject the restriction that the detention be carried out in accordance with previously laid down laws.

119. The Respondent further maintained that the Applicant as an Aircraft Woman was subject to Armed Forces service law, and was detained due to her breach of that Law. They therefore conclude that the Court cannot be called upon to adjudicate the matter in her favour.

120. Article 6 of the African Charter, provides that;

*“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”*

121. The Court notes that though the right to liberty is guaranteed by the African Charter and other international human rights instruments, it is clear that the right is not absolute, as it can be infringed on in accordance with the law. To this extent, the Court aligns with the argument of the Respondent. However, it is worth noting that a detention may be in accordance with the law and thus be lawful but can nevertheless be arbitrary if falls short of the fundamentals for the protection of the right to liberty since a higher international standard is imposed on the content of domestic law as it subjects that “law” to compliance with the fundamentals of human rights protection. This was captured by the Court below;

*“It is not sufficient for an act on the basis of which a state limited the enjoyment of possession to be a formal legal source within the meaning of domestic laws, but it must furthermore contain certain*



*qualitative characteristics and afford appropriate procedural safeguards as to ensure protection against arbitrary action and conformity with the rule of law. See BEDIR SARL VS NIGER JUDGMENT NO. ECW/CCJ/JUD/11/20 PAGE 24.*

122. Though above decision is in relation to the right to property, same is equally applicable to the right to liberty, the interference in both being restricted to be in accordance with the law.

123. The Court has in its jurisprudence elaborated on the term arbitrary and have reiterated that the restriction to the right to liberty becomes unlawful or arbitrary when procedures laid down by the law are not followed or where the detention is not on reasonable grounds as held below;

*“Arbitrary detention is a detention not in conformity with the national or international law and which occurs without a legitimate or reasonable ground.” BENSON OLUA OKOMBA V REPUBLIC OF BENIN ECW/CCJ/JUD/05/17 PAGE 16.*

124. Additionally, the Court has held that:

*“With regard to the meaning of arbitrary detention, the Human Rights Committee of the United Nations pointed out that “arbitrariness” is not to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, law of predictability and due process of law.” DOROTHY CHIOMA NJEMANZE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/08/17 PAGE 36.*



125. Furthermore under the UN Basic principles a detention will be deemed arbitrary amongst others;

- a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence, or despite an amnesty law applicable to the detainee, or a person detained as a prisoner of war is kept in detention after the cessation of effective hostilities);
- b) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;

See BASIC PRINCIPLES AND GUIDELINES ON REMEDIES AND PROCEDURES ON THE RIGHT OF ANYONE DEPRIVED OF HIS OR HER LIBERTY BY ARREST OR DETENTION TO BRING PROCEEDINGS BEFORE COURT.

126. The import of above jurisprudence is that any deprivation of liberty is arbitrary when there is no legal basis for it, where it is inappropriate, unjust and does not follow the due process of law amongst others.

127. In the instant case, the Applicant claim she was not informed of the reason for her many detentions, but believes she was being punished for exposing a senior colleague who raped her. The Respondent did not deny the allegation that the Applicant was detained several times. Rather, they justified the detention on the basis that Article 6 is not absolute and the detention was in accordance with the Armed Forces Act, which the Applicant had breached. The natural continuation

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of this justification would have been for the Respondent to provide an evidence of the infraction committed by the Applicant thereby amplifying the law in question.

128. Whilst the burden of proving that a detention is arbitrary rests on the Applicant, however in the instant case, since the Respondent did not deny the detentions alleged but claim that it was in accordance with the Armed Forces Act, the burden thereafter shifts on the Respondent to discharge the burden of proving that the detention was not arbitrary same being in accordance with Law. In reiterating this principle, the Court held thus;

*“Ordinarily, the Plaintiff in this case has the burden of presenting evidence to prove the allegations he has made in his Originating Application. However, the Defendant has not denied the arrest and detention of the Plaintiff but sets up a defense of justification. The burden thus shifts from the Plaintiff to the Defendant to establish the justification of the lawfulness of the arrest and detention of the Plaintiff.”* MR. GODSWILL TOMMY UDOH V FEDERAL REPUBLIC OF NIGERIA JUDGMENT N°. ECW/CCJ/JUD/26/16 PAGE 17.

129. The overall implication of the act of the Respondent in this wise is that the detention of the Applicant without a legal basis is obviously unjust and lacking in due process.

130. Consequently, in the absence of any evidence adduced by the Respondent to justify that the Applicant’s detention was in accordance with the NAF

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regulations, the Court finds that the Respondent violated the Applicant's right to liberty contrary to Article 6 of the African Charter and so holds.

**f) *On the allegation of unlawful dismissal from work under Article 15 of the Charter.***

### **Analysis of the Court**

131. The Applicant alleges that on 19 October 2015, she was dismissed orally when Squadron Leader Ejiga informed her that she has been dismissed from the NAF without adherence to the laid down procedure of the Armed Forces Act. Following her dismissal, on 28 October 2015 she was evicted from the official apartment at the 445 Nigerian Air Force Base in Ikeja Lagos. She concludes that the dismissal is a violation of her right to work under Article 15 of the African Charter and Article 23 of the Universal Declaration of Human Rights.

132. The Respondent on its part made a general denial of the Applicant's allegation and puts her to the strictest proof of same.

133. Article 23(1) of the Universal Declaration of Human Rights provides,

*"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."*

134. Article 15 of the African Charter provides,

*"Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work."*



135. The Court in its consideration of the import of this right state as follows;

*“The right to work envisages the freedom to retain or stay on a job and earn the pay as agreed and not to be deprived of employment unfairly.”*

*“The violation of the right to work contemplates a severance from work which permanently deprives the employee of the job under conditions that is manifestly unfair.”*

HIS LORDSHIP JUSTICE PAUL UUTER DERRY & 2 ORS v. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 PAGE 29.

136. Ahead of the examination of this allegation, the Court hastens to state that the right to work is not to be understood to place an obligation on the State to prevent unemployment or ensure all citizens have a job, rather it obligates the State when a job has been secured not to sever and unfairly deprive the employee of the job.

137. The examination of an allegation of violation of the right to works entails a proof of employment by the alleged violator, proof of termination of the said employment and finally that the termination was unlawful. The Court will now proceed to situate the facts of this case into these requirements.

*a) Proof of employment*

In analysing this head, it is necessary for the Applicant to prove that she was an Air Woman in the employment of the NAF, especially in the light of the Respondent’s general denial of the Applicant’s assertion. This burden lies on her since she alleges the unlawful dismissal. Once the burden is discharged, it shifts to the respondent/ defendant to disprove same. The Court reiterated this when it held thus;





*“It is trite principle of law that a party who alleges wrongful termination of his contract of employment is bound to show or prove that he indeed had an employment with the Defendant. He must plead or show by giving credible evidence that he had an employment that was terminated by the Defendant.”* DR. ROSE MBATOMON AKO V WEST AFRICAN MONETARY AGENCY & 5 ORS (2013) CCJELR, PAGE 13, PARAGRAPH 32.

138. Furthermore the Court held that

*“The general principle of evidence is that he who alleges has the burden of proof. Once a person who has the onus to prove fulfils same, he carries the benefit of presumption, and as such the burden of proof passes to the other party.”* MR. CHUDE MBA V. REPUBLIC OF GHANA (2013) CCJELR, PAGE 354, PARAGRAPH 83.

139. In this regard, the Applicant did not furnish the Court with a documentary evidence of her enlistment into the NAF. However, in her written submission, she severally cited ACW 10/25152, a number which identifies her as an Air Woman serving in the Nigerian Air Force. The Court further notes that said service number was written against her name which is Beauty Igbobie Uzezi, in all the reports from the medical facilities she attended both at 345 Aeromedical Hospital NAF Kaduna and the Nigerian Airforce Hospital, Ikeja, Lagos. These medical documents include reports, laboratory forms, X-ray forms, prescription forms and other similar hospital documents marked (Annexures A, B, C, D, E, F and M).



140. In the Armed forces, a service number is the primary means of service member identification. They are public information. See *Military.wikia.org*. Such number is not available to anyone outside the employment of the Armed Forces. Additionally, it is unique to the identified person as it is not replicated to another person no matter the passage of time. Consequently, evidence of a service number is a *Prima Facie* proof of employment within the said Forces.

141. It is noteworthy that the Respondent did not contest the validity of the said Service No. ACW 10/25152 quoted by the Applicant to the effect either that it is fake or is not attached to her. While the Applicant did not provide any documentary proof of her employment, the conclusion drawn from the said number sufficiently discharged the burden of proving her employment with the Nigerian Air Force. On this note, the Court is of the considered opinion that the Applicant was an enlisted person in the Nigerian Air Force and so holds.

*b) Proof of dismissal.*

142. The Applicant stated that she was dismissed orally on 19 October 2015. The Respondent on its part denies the allegation, stating that the Applicant neglected to take appropriate action on the alleged oral dismissal from the NAF, putting the Applicant to the strictest proof of the allegation.

143. The Court considers that the averment of oral dismissal cannot be proved beyond its assertion, the burden shifts to the Respondent to produce evidence that the Applicant was legally dismissed in accordance with the procedures set out in the NAF laws and regulations and thereby producing the dismissal letter to that effect. In the absence of which the Court believes the Applicant that she

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was dismissed albeit orally and holds that the requirement of dismissal has been established.

*c) Proof of unlawful dismissal*

144. Having established that the Applicant was enlisted in the NAF and orally dismissed, she must finally prove that the dismissal was unlawful to prove a violation of Article 15. In making a determination of this violation, the Court must of necessity examine the regulations guiding termination, dismissal or discharge of employment under the NAF Laws. The procedure for dismissal is provided for in Section 32(3) of the Armed Forces Act Chapter A20 Laws of the Federation of Nigeria 2004, which states;

*“Except in pursuance of a sentence of a court-martial under this Act, an enlisted person shall not be discharged unless his discharge has been authorized by order of the respective Service Chief in accordance with regulations made under this Part of this Act.”*

145. The import of above is that the dismissal of an enlisted person must be carried out by one of the two methods: a sentence of a Court- Martial or order of the appropriate Service Chief. From the facts presented to the Court, none of these procedures was followed. While the Applicant maintains that she was orally discharged, the Respondent did not disprove this assertion by adducing evidence of compliance with either of the above procedures. It is no gainsaying that an oral dismissal is not in consonance with the above procedure as a court-martial and or an order of a Service Chief will necessarily have documentation implications which can be presented as proof of compliance.

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146. Therefore any discharge of an enlisted person in the Armed Forces not in conformity with Section 32 (3) of the Armed Forces Act is unlawful. The Consequence of such unlawful discharge is that the Applicant has been unfairly deprived of her employment and denied freedom to retain or stay on a job and earn a pay as agreed.

147. The Court comes to the inevitable conclusion that the Applicant' employment was unlawfully terminated and holds that the Respondent is in violation of Article 15 of the African Charter and Article 23 of the Universal Declaration of Human Rights.

#### ***X. REPARATIONS***

148. The Applicant in her submissions for reparation prays the Court to grant the reliefs stated in paragraph 21 of this judgment.

149. The Respondent in response to the Applicant's prayers for reparations states that the reliefs sought are vexatious, frivolous and without merit. That the Applicant's claim is an attempt to use the Court to extort the Respondent.

#### **Analysis of the Court**

150. It is a settled principle of international law that reparation is fundamental to repair any harm caused, when a State has been found liable for an international wrong. The Court has upheld this principle in a plethora of cases, of which it recalls its holding in the following cases,

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*“A State must make full reparation for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of full restitution of the original situation if possible or compensation where that is not possible or satisfactory i.e. acknowledgement of an apology for the breach, may contribute immensely to resolving wounds from the violation.”* MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 2 ORS ECW/CCJ/JUD/12/14 PAGE 40.

*“The principle of reparation constitutes one of the fundamental principles of law regarding liability. It is sufficient that the harm to be repaired must exist in reality, must be directly linked to the victim, and shall be true and capable of being evaluated.”* MRS MODUPE DORCAS AFOLALU V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/15/14 PAGE 14.

151. In the instant case the Court having found the Respondent in violation of the rights of the Applicant contrary to Articles 5, 6, 15 and 16 of the African Charter and Article 23 of the Universal Declaration of Human Rights, holds that the Respondent is liable to make reparations for the damages suffered by the Applicant.

152. The relief sought by the Applicant is for the sum of \$10, 000,000. 00 (Ten Million Dollars) only as general damages for the physical, psychological and mental torture suffered by the Applicant as a result of the various human rights violations she was subjected to by the Respondent. With regards to the allegation



of rape and sexual violence, the Court had found the Respondent in violation of freedom from torture, CIDTP contrary to Article 5 of the Charter. In assessing reparation for this head, obviously *restitutio in integrum* is impracticable leaving monetary compensation as the viable option. The question to answer is - what amount of money is sufficient to repair or compensate the trauma of a young teenager just entering adulthood, a trauma that will remain with her for life?

153. The Inter-American Court of human rights aptly captures the psychological effects of rape thus; *“The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.”* RAQUEL MARTÍ DE MEJÍA V. PERÚ, CASE 10.970, REPORT NO. 5/96, INTER-AM.C.H.R., OEA/SER.L/V/II.91 DOC. 7 AT 157 (1996).

154. Whilst the effect of these gruesome acts cannot be erased, nor fully atoned for, the Court will assess an all- inclusive amount as compensation for torture emanating from rape and sexual violence, unlawful detention as well as a violation of her health arising from depression. The Court therefore considers the award of the sum of two hundred thousand US Dollars (\$200,000) as the minimum compensation to be paid by the Respondent.

155. With regards to the violation of Article 7 on right to work, the Applicant sought the order of the Court for the payment of her monthly salary and other allowances from the date of the unlawful discharge to the date of enforcement of the judgment. Additionally the Applicant sought an order of Court for her

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reinstatement to the current rank of her contemporaries or in alternative a conversion of dismissal to retirement.

156. With regards to the claim of payment of outstanding salaries and allowances to the Applicant for reparations for unlawful discharge, the Court considers it appropriate.

157. Regarding her request for reinstatement, the Court declines to order the reinstatement of the Applicant to the NAF as no exceptional circumstances have been shown for the Court to make such an order. However, the Court notes that dismissal as distinct from retirement or voluntary resignation is usually indicative of a punitive measure for a wrongdoing or an act of misconduct and attracts social stigma which may prevent or affect future employment opportunities.

158. The Applicant having not committed any misconduct in the Service warranting dismissal, the Court therefore orders that the Applicant's dismissal from the services of the NAF be converted to retirement from the date of enforcement of this judgment with the attendant benefits attached thereto in accordance with appropriate rules and regulations of the NAF in that wise.

159. The Court also orders the Respondent to pay all salaries, allowances and benefits that the Applicant is entitled to as an Aircraft Woman from the date of her dismissal that is, from 19 October 2015 till the date the judgment is enforced and the Court notified accordingly.

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160. Regarding the Respondent's duty of due diligence, the Court having found that the Respondent failed in carrying out this duty, orders the Respondent to carry out an impartial investigation into the rape of the Applicant and prosecute the perpetrator and his accomplices.

## ***XI. COSTS***

161. The Applicant prayed the Court for costs of the proceedings urging the Court for an Order directing the Respondent to pay to the Applicant the sum of \$500,000.00 (Five Hundred Thousand US Dollars) only, being the solicitors fees and other incidental costs of the proceedings. The Respondent on its part urged the Court to dismiss the Application with deterring costs against the Applicant, as it is frivolous and without merit.

162. Article 66 (1) of the Rules of Court provides, "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

163. In addition, Article 66(2) of the Rules of Court provide, "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"

164. In light of the provisions of the Rules, the Court holds that the Respondent as the unsuccessful party shall bear the costs of the proceedings. However, the sum of five hundred thousand (500,000) US Dollars claimed by the Applicant is disproportionate and not supported by any documentary proof. The claim in this amount is therefore denied but the Chief Registrar is directed to assess appropriate costs accordingly.

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## *XII. OPERATIVE CLAUSE*

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

### **On jurisdiction**

- i. Declares that it has competence to adjudicate on the Application;

### **On admissibility**

- ii. Declares that the Application is admissible;

### **On merits**

- iii. **Declares** that the rape of the Applicant violated her right to dignity of human being under Article 5 of the African Charter by the Respondent;
- iv. **Declares** that the Applicant's right to liberty under Article 6 of the African Charter was violated by the Respondent;
- v. **Declares** that the Applicant's right to work under Article 15 of the African Charter and Article 23 of the Universal Declaration of Human Rights was violated by the Respondent;
- vi. **Declares** that the Applicant's right to health under Article 16 of the African Charter was violated by the Respondent;
- vii. **Dismisses** the allegation of the Applicant that her right to life under Article 4 of the Charter was violated by the Respondent;



- viii. **Dismisses** all other declarations sought by the Applicant;
- ix. **Orders** the Respondent to convert the dismissal of the Applicant to retirement from service with the attendant benefits, effective from the date of enforcement of this judgment;
- x. **Orders** the Respondent to pay to the Applicant her salaries, allowances and other benefits from the date of the unlawful discharge on 19 October 2015 to the date of enforcement of this judgment;
- xi. **Orders** the Respondent to carry out an impartial investigation into the rape of the Applicant and prosecute the perpetrator and his accomplices;
- xii. **Orders** the Respondent to pay the lump sum of two hundred thousand US Dollars (\$200,000) to the Applicant as compensation for moral prejudice suffered as a result of the violation of her rights under Articles 5, 6, 15 and 16 of the African Charter.

**On Costs:**

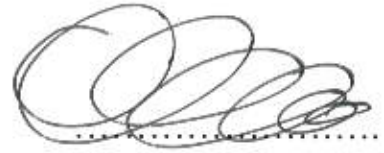
- xiii. **Orders** the Respondent to bear the costs of the proceedings and directs the Chief Registrar to assess the costs accordingly.

**As to compliance and reporting**

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

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Hon. Justice Edward Amoako **ASANTE** - Presiding



Hon. Justice Dupe **ATOKI** – Judge Rapporteur



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



Mr. Tony **ANENE-MAIDOH** - Chief Registrar



Done in Abuja, this 30<sup>th</sup> Day of April 2021 in English and translated into French and Portuguese.

