

**IN THE COMMUNITY COURT OF JUSTICE
OF ECONOMIC COMMUNITY OF WEST AFRICAN STATES
HOLDEN AT ABUJA, NIGERIA**

SUIT NO: _____

BETWEEN:

1. Ousainou Darboe
2. Kemmesseng Jammeh
3. Femi Peters
4. Lamin Dibba
5. Lamin Jatta
6. Yaya Bah
7. Baboucarr Camara
8. Fakebba Colley
9. Ismaila Ceesay
10. Mamodou Fatty
11. Dodou Ceesay
12. Samba Kinteh
13. Mamudu Manneh
14. Nfamara Kuyateh
15. Fanta Darboe-Jawara
16. Lamin Njie
17. JugunaSuso
18. Momodou L. K Sanneh
19. Yaya Jammeh
20. Masaneh Lalo Jawlan
21. Lamin Sonko
22. Modou Touray
23. Lasana Beyai
24. Lamin Marong
25. Alhagie Fatty
26. Nogui Njie
27. Fatoumata Jawara
28. Fatou Camara
29. Kafu Bayo
30. Ebrima Jadama
31. Modou Ngum
32. United Democratic Party (UDC), The Gambia, (suing for itself and for the Estate of *Ebrima Solo Sandeng (deceased)*)

PLAINTIFFS

AND

THE REPUBLIC OF THE GAMBIA

DEFENDANT

APPLICATION PURSUANT TO:

1. ARTICLE 33 OF THE RULES OF PROCEDURE OF THE COMMUNITY COURT OF JUSTICE OF ECOWAS.
2. ARTICLE 10 OF THE SUPPLEMENTARY PROTOCOL A/SP.1/01/05 AMENDING THE PROTOCOL (A/P1/7/91) RELATING TO THE COMMUNITY COURT OF JUSTICE.
3. ARTICLES 2, 4, 5, 6, 7 10, 11 and 13 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS.
4. ARTICLES 3, 4(1) AND 25 (A) OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA
5. ARTICLES 1 (h) and (j) OF THE ECOWAS PROTOCOL ON DEMOCRACY AND GOOD GOVERNANCE(A/SP1/12/01).

1. THE NAMES OF THE PLAINTIFFS:

2. The name of the 1st plaintiff is OUSAINOU DARBOE. He is the leader of the United Democratic Party (UDP).
3. The name of the 2nd plaintiff is KEMESSENG JAMMEH.
4. The name of the 3rd plaintiff is FEMI PETERS.
5. The name of the 4th plaintiff is LAMIN DIBBA.
6. The name of the 5th plaintiff is LAMIN JATTA. He is a taxi driver and vice chairman of the United Democratic Party for the West Coast region.
7. The name of the 6th plaintiff is YAYA BAH.
8. The name of the 7th plaintiff is BABOUCARR CAMARA.
9. The name of the 8th plaintiff is FAKEBBA COLLEY.
10. The name of the 9th plaintiff is ISMAILA CEESAY.
11. The name of the 10th plaintiff is MOMODOU FATTY.
12. The name of the 11th plaintiff is DODOU CEESAY.
13. The name of the 12th plaintiff is SAMBA KINTEH
14. The name of the 13th plaintiff is MAMUDU MANNEH.
15. The name of the 14th plaintiff is NFAMARA KUYATEH
16. The name of the 15th plaintiff is FANTA DARBOE-JAWARA.
17. The name of the 16th plaintiff is LAMIN NJIE.
18. The name of the 17th plaintiff is JUGUNA SUSO.
19. The name of the 18th plaintiff is MOMODOU. L.K SANNEH.
20. The name of the 19th plaintiff is YAYA JAMMEH.
21. The name of the 20th plaintiff is MASANEH LALO JAWLAN.
22. The name of the 21st plaintiff is LAMIN SONKO
23. The name of the 22nd plaintiff is MODOU TOURAY.
24. The name of the 23rd plaintiff is LASANA BEVAI
25. The name of the 24th plaintiff is LAMIN MARONG
26. The name of the 25th plaintiff is ALHAGIE FATTY.
27. The name of the 26th plaintiff is NOGOI NJIE.

28. The name of the 27th plaintiff is FATOUMATA JAWARA
29. The name of the 28th plaintiff is FATOU CAMARA
30. The name of the 29th plaintiff is KAFU BAYO.
31. The name of the 30th plaintiff is EBRIMA JADAMA.
32. The name of the 31st plaintiff is MODOU NGUM.
33. The 32nd Plaintiff is a political party in the Republic of The Gambia (the defendant), and whose organizing secretary Ebrima Solo Sandeng (deceased) was arrested and tortured to death by agents of the defendant.

2. THE ADDRESS FOR THE PLAINTIFFS:

The Plaintiffs various addresses are in The Gambia, and for this application, c/o of their Solicitors, 57, Kairaba Avenue, Fajara, KSMD, or **4 Manzini Street, Wuse Zone 4, Abuja, Nigeria.**

3. DESIGNATION OF THE DEFENDANT:

THE REPUBLIC OF THE GAMBIA

4. SUBJECT MATTER OF THE PROCEEDINGS:

- A. Violation of Articles 4, 5, 6, 7, 10, 11 &13 of the African Charter on Human and People's Rights.
- B. Violation of Articles 3, 4(1) And 25 (A) of The Protocol to The African Charter On Human and People's Rights on the Rights of Women in Africa
- C. Violation of Article1 (j) of the ECOWAS Protocol on Democracy and Good Governance.

WHEREAS:

- i. The Republic of The Gambia is a signatory to the Revised Treaty establishing the Economic Community of West African States (ECOWAS) of 24 July, 1993; ratified the African Charter on Human and People's Rights on 8 June 1983 and ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa on 25th May 2005.
- ii. The Republic of The Gambia ratified ECOWAS Protocol on Democracy and Good Governance on 21st May 2008 and the plaintiffs are Community Citizens within the meaning of Article 1(1) (a) of the Protocol A/P3/5/82 relating to the definition of Community Citizen.

6. NARRATION OF THE FACTS BY THE PLAINTIFFS:

1. The 1st to 31st plaintiffs, majority of who are members of the 32nd Plaintiff, United Democracy Party (UDP) in Republic of The Gambia, were arrested during peaceful protests on the 16th of April 2016. They were unlawful detained and severely torture by the defendant, and imprisoned.
2. One of the earlier arrested persons, *Ebrima Solo Sandeng*, died from torture inflicted on him. The defendant later admitted in a sworn deposition (*Annexure B2 herein*) that Mr. Sandeng died in the course of his detention and interrogations. It is plaintiffs' contention

that his death resulted from fatal injuries inflicted on him during torture by agents of the defendant as testified by the sworn evidence of the victims and eyewitnesses (*Annexures A1 – A11*).

3. Furthermore, this application raises before this Honourable Court the question as to whether the provisions of the '*Public Order Act*' of the defendant is contrary to the Article 11 of the African Charter on Human and People's Rights, and other relevant human rights instruments.
4. On 14th of April 2016, dozens of people led by Ebrima Solo Sandeng, the organizing secretary of the United Democratic Party (UDP) staged a peaceful protest in The Gambia. Officers of the Police Intervention Unit (PUI) brutally attacked the protesters without giving them an opportunity to disperse. The officers used more force than necessary and indiscriminately and randomly arrested persons in the vicinity of the protests.
5. Majority of those arrested were transferred and detained at Mile 2 Central Prisons in The Gambia without remand warrant, while at least five persons were delivered into the custody of the National Intelligence Agency (NIA). The five people who were taken directly to the NIA Office were Ebrima Solo Sandeng, Nogui Njie, Modou Ngum, Ebrima Jadama and Aguayo.
6. In the early hours of 15th of April 2016, National Intelligence Agency (NIA) officers removed about 21 of the detainees who had been taken to the Central Prisons at Mile 2 and transported them back to their headquarters in Banjul. Thus, the total number of detainees (3 females and 23 males) in NIA custody was 26.
7. The detainees were questioned about their political affiliations; some were asked whether they knew Ousainu Darboe; and that they were subjected to various forms of torture, violence and intimidation by masked men.
8. 18 of the detainees were transported back to the Central Prison at Mile 2 around 6am on the 15th of April 2016. Seven, including the three women, were hospitalized due to injuries sustained after they were subjected to various forms of torture and ill-treatment in the hands of the National Intelligence Agency (NIA) at their premises. They were taken back to the Central prisons at Mile 2 on 28th of April 2016.
9. Ebrima Solo Sandeng was reported to have died from injuries sustained from torture in the morning of the 15th of April 2016. He has not been seen, neither has his body been released to his family.
10. A Habeas Corpus application was filed on behalf of Ebrima Solo Sandeng on the 26th May 2016. On the 13th and 22nd June 2016 respectively, the State file an affidavit and further affidavit and stated that: "The applicant unfortunately lost his life in the whole process of arrest and detention" and further that the primary cause of the applicant's death was shock and the secondary cause of death Respiratory Failure. A Medical

Certificate of Death attached to the further affidavit indicates date of death as 15th April, 2016 at 04.20am hours. His family has not been informed or given his body. The two affidavits referred to above are *Annexures B2 and B3* in this application.

11. On the 16th of April 2016, the United Democratic Party (UDP) undertook a peaceful march from the place of the 1st plaintiff in Kairaba Avenue heading to the PIU headquarters to demand for the release of Ebrima Solo Sandeng, dead or alive, and other detainees. The protesters carried a Gambian flag and walked with their arms locked together, towards the Westfield intersection with the Banjul/Serrekinda highway. They were intercepted by PIU officers in riot gear and other security officers who attacked them with batons, tear gas and butts of their guns. The protesters were beaten and thrown into trucks. The beating continued after they were thrown into the trucks.
12. They were then transported to the PIU Headquarters until the next day, the 17th of April 2016 at around 5pm when they were transported to the Mile 2 Central Prisons where they were detained without a remand warrant and tortured, put in solitary confinement, and abused by the defendant.
13. On the 18th of April 2016, an originating summons was filed on behalf of the detainees from both incidents seeking their unconditional release. The originating summons was fixed for hearing on the 21st of April 2016. However, on the 20th of April 2016, charges were filed by the defendant before the High Court by way of information against most of those arrested. (*See Annexure B7*) and (*See Annexures B5 & B6*).
14. The detainees were all in bad physical conditions when they were brought to court. Several of them had injuries on various parts of their bodies. Some were limping and had difficulty moving. They were wearing the same clothing that they had on them when arrested. They had been denied access to family, lawyers or any third parties during their detention. Many of them were held in solitary confinement from time of arrest and detention.
15. The plaintiffs were arrested, detained and tortured because they are, and/or allegedly are, members of the 32nd Plaintiff, an opposition political party.
16. The plaintiffs have been sentenced to a term of 3 years in prison by a judgment delivered by Hon. Justice Eunice Oshim Dada dated the 20th of July, 2016. The purported trial was devoid of fair hearing, and the 1st Plaintiff was denied his right to make a statement on his sentencing before he was sentenced.
17. The matter is one of urgency because the presidential election has been set for December 2016.
18. The *Public Order Act* by its section 5 is an unjustifiable restriction of rights under Article 7 of the African Charter on Human and People's Rights.

7. SUMMARY OF PLEAS IN LAW:

A. APPLICABILITY OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS.

Article 4 of the revised Treaty of the Economic Community of West African States (ECOWAS) 1993 provides that the contracting parties affirm:

“4(g).... recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and People’s Rights”.

1. Violation of Article 4 of the African Charter on Human and People’s Rights

The arrested, detention without warrant, torture, and abuse of the plaintiffs by the defendant, as stated above, constituted violation of their rights to integrity of their person, and threat to their life, and therefore violates Article 4 of the Charter.

The defendant’s agents tortured to death Ebrima Solo Sandeng, as admitted by them in Annexures B2, violated his right to life. The taking of his life was arbitrary and extra judicial, in gross breach of the defendant’s Constitution and its obligations under Article 4 of the Charter.

2. Violation of Article 5 of the African Charter on Human and People’s Rights

The provisions of Article 5 of the Charter, in particular, prohibition of torture, cruel, inhumane or degrading treatment is one of the fundamental bastions of democracy. The right to freedom from torture, cruel, inhumane and degrading treatment is enshrined in numerous human rights provisions. As one of the most recognizable human rights, prohibition of acts of torture, cruel and degrading treatment has attained status of a *jus cogens* peremptory norm of international law. *Jus cogens* are international norms considered so fundamental that no derogation from them is permitted, even through the application of other international norms.¹This in turn gives rise to the obligation *erga omnes*; an obligation owed to and by all States to take action against those who carry out such despicable acts.

The United Nations Convention Against Torture defined torture as:

“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.”²

Torture therefore constitutes the intentional and systematic infliction of physical or psychological pain and suffering in order to punish, intimidate or elicit information. It is a tool

¹ Article 53 of Vienna Convention on the Law of treaties.

² Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987

for discriminatory treatment of persons or group of persons who are subjected to the torture by the state or non-state actors at the time of exercising control over such person or persons.³

In the African regional system, acts of torture, cruel, inhuman and degrading punishment or treatments have been severely condemned and denounced. In many decisions, the African Commission on Human and People's Rights (*The Commission*) has found that State parties to the African Charter have the responsibility to refrain from inflicting torture on its citizens or on anyone, and duty to protect citizens from torture, cruel, inhuman and degrading punishment or treatments, and where they occur, to investigate, prosecute and properly punish the perpetrators in accordance with the law. Where a State Party fails to do so, the Commission has found such State in violation of its obligations under the Charter, and the victims are entitled to remedies including order of release, treatment, and adequate compensation. See *Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt*⁴, the complainants were detained, tried, and sentenced to death. The complainants alleged that during the victims' detention, State Security Intelligence agents subjected them to various forms of torture and ill-treatment to elicit confessions. The agents held them incommunicado for a long period of time, without access to a lawyer and denied them necessary medical attention. The African Commission held that the treatment of the complainants violated Article 5 of the African Charter, which covers not only torture, but also cruel, inhuman or degrading treatment and punishment. See also *Gabriel Shumba v Zimbabwe*⁵ where the African Commission recommended that the State paid compensation to the victim for this trauma and carry out an inquiry to bring the officials who perpetrated the crime to justice.

From the decision in *Selmouni v France*⁶ the European Court of Human rights held that subjecting detainees to unnecessary physical force diminishes human dignity and is a violation of human rights. The European Court of Human Rights has even gone so far as to develop case-law presumptions regarding ill-treatment inflicted by State actors. It held in the case of *Yavuz v. Turkey*⁷ that:

“Where an individual is taken into custody in good health but is found to be injured by the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim's allegations, particularly if those allegations were corroborated by medical reports, failing which a clear issue arises under Article 3 of the Convention”

The plaintiffs in this matter, as well as all those previously arrested on the 14th of April 2016 were subjected to acts of torture from the point of arrest till when they were presented in court. They were brutally attacked by the Police officers; a totally unwarranted and excessive use of physical force. The plaintiffs in sworn statements attached to this application as *Annexures A1 to A11*, described in details how they were physically tortured, psychologically tormented and

³ 279/03-296/05: Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) Sudan, paragraph 156.

⁴ 1 March 2011, ACHPR, 334/06, 9th Extra-ordinary Session

⁵ April 2012, ACHPR, 288/04, 51st Ordinary Session

⁶ Application No. 25803/94, Judgment of 28 July 1999

⁷ Application no. 32577/02, Judgment of 29 September 2008.

grossly abused by officials of the defendant. It is submitted that these acts clearly constitute grave violations of Article 5 of the Charter.

Furthermore, their arrest, detention, torture and abuses were as a result of their belonging to an opposition political party, the 32nd plaintiff, and in preventing them from exercising their rights to hold political opinion as guaranteed under *Article 2 of the African Charter on Human and People's Rights*, and to participate in political processes, election of their representation and political association, which violate *Article 13 of the African Charter*.

3. Violation of Article 6 of the African Charter on Human and People's Rights

The provisions of Article 6 of the Charter are as follows:

“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”

It is submitted that the manner of arrest and detention of the plaintiffs and victims in this case was in violation of Article 6. Apart from the fact that unreasonable force was used in detaining and arresting the plaintiffs, they had been kept and tortured in detention for a period longer than the prescribed time under the Constitution of the Republic of Gambia.⁸

It is also submitted that the arrest was arbitrary and unlawful. The *Human Rights Committee* of the International Covenant on Civil and Political Rights explained that arbitrariness as used here is not to only to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, and highhandedness (See *Gorji-Dinka v. Cameroon*⁹), as well as elements of reasonableness, necessity and proportionality¹⁰.

4. Violation of Article 7 of the African Charter on Human and People's Rights

The right to fair trial under Article 7 of the Charter is one of the most important human rights provisions. The right to a fair hearing is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms. Human rights considerations are of increasing relevance to the law governing the conduct of proceedings and to legal conceptions of what amounts to a fair trial or a just decision.¹¹

The right to a ‘fair hearing’ is recognised and enshrined in art 14(1) of the ICCPR:

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

⁸ Section 24 of the Constitution of The Republic of The Gambia 1997 prescribes a period of 72 hours. The plaintiffs were arrested on the 16th of April 2016 and did not appear in court until the 20th of April 2016.

⁹ Communication No: 1134/2002

¹⁰ General comment No. 35(2014) on liberty and security of person, para.12

¹¹ See generally Joseph M Jacob, *Civil Justice in the Age of Human Rights* (2007).

The European Court of Human Rights, in *Ciorap v Moldova*¹² and *Bakan v Turkey*¹³, confirmed that the right to a fair hearing includes a right of access to the courts as well as to legal aid and representation. The right to fair hearing of the plaintiffs has been denied. Ousainou Darboe in his statement which he was prevented from reading to court says that the plaintiffs were denied their right to counsel because the court ruled that they could defend themselves. This is in violation of the right of the plaintiffs to be defended by a counsel of their choice. There has been a blatant disregard for the rights to fair trial of the plaintiffs which can be seen from Mr. Darboe's statement and the judgment of the court. These are *Annexures B9*.

5. Violation of Article 11 of the African Charter on Human and People's Rights

The freedom of assembly and association under Article 11 of the Charter is also one of the most important fundamental human rights provision. Rights to freedom of peaceful assembly and of association are essential components of democracy and pillars of a thriving society

The arrest and detention of the Plaintiffs, in order to prevent them from their peaceful protest, without any court order or warrant, violated Article 11, and nullifies any justification of such arrest and detention on basis of any law of the defendant.

Furthermore, the Human Rights Committee reiterated in *Bakur v. Belarus*¹⁴ that arrest or detention may be authorized by domestic law and nonetheless be arbitrary.

Section 5 of Public Order Act of The Gambia violates Article 11 of the African Charter on Human and People's Rights.

Section 5 of the *Public Order Act*¹⁵ provides thus:

- (1) The Inspector-General of Police in the city of Banjul or the Kaniging Municipality or; in any of the regions, the Governor or other person authorized by the president may direct the conduct of all public processions and prescribe the route by which and the times at which any procession may pass.*
- (2) A person who is desirous of forming any public procession shall first make application for a license to the Inspector-General of Police or the Governor of the region, or other person authorized by the President, as the case may be, and if the Inspector-General of Police or the Governor of the region or other person authorized by the President is satisfied that the procession is not likely to cause a breach of the peace, he or she shall issue a license specifying the name of the license and defining the conditions on which the procession is permitted to take place.*
- (3) A condition restricting the display of flags, banners, or emblems section shall not be imposed under subsection (2) of this section except such as are reasonably necessary to prevent risk of a breach of the peace.*

¹²[2007] ECHR Application No 12066/02 (19 June 2007)

¹³[2007] ECHR Application No 50939/99 (12 June 2007)

¹⁴CCPR/C/114/D/1902/2009

¹⁵ Act No. 7 of 1961, amended by Act No. 29 of 1963 and Act No. 5 of 2009.

(4) *A magistrate or police officer not below the rank of Sub-inspector may stop any public procession for which a license has not been issued or which violates any of the conditions of a license issued under subsection (2) of this section, and may order it to disperse.*

(5) *A public procession which-*

(a) *Takes place without a license under subsection (2) of this section, or*

(b) *Neglects to obey any order given under subsection (4) of this section,*

is deemed to be an unlawful assembly, and all persons taking part in the procession, and in the case of a public procession for which no license has been issued, all persons taking part in the convening, collecting or directing of the procession commit a cognizable offence and on summary conviction before a Magistrate, are liable to imprisonment for a term of three years.

It is clear that this section of the Act is in violation of established international standards that guarantee the right to freedom of assembly and association. The provisions do not in any way meet the threshold required to justify the restrictions imposed on the right to freedom of assembly. It has turned the fundamental human right of assembly, peaceful protests, processions and demonstrations into a privilege to be conferred at the discretion of the authorities.

This section of the Public Order Act is in violation of Article 11 of the African Charter, as well as section 25 of the Constitution of the Republic of The Gambia. Section 25 of the Constitution reads thus:

(1) *Every person shall have the right to-*

(a) ***Freedom of speech and expression, which shall include freedom of the press and other media;***

(b) *Freedom of thought, conscience and belief, which shall include academic freedom;*

(c) ***Freedom to assemble and demonstrate peaceably and without arms;***

(d) *Freedom of associations, which shall include freedom to form and join associations and unions, including political parties and trade unions...*

The provisions of section 5 of the Public Order Act are clearly incompatible with section 25 (1) (c) of the Gambian Constitution. Section 5 of the Public Order Act is void by section 4 of the Constitution which says that

“The constitution is the supreme law of The Gambia and any other law found to be inconsistent with any provision of this constitution shall, to the extent of the inconsistency be void.”

This honourable court, being a community court of Justice of ECOWAS, has jurisdiction to rely on the African Charter, or the Constitution of its member State, to declare a domestic law, such as the Public Order Act, unconstitutional and unlawful.

In Nigeria, in *Inspector General of Police v. All Nigeria People's Party and Ors*¹⁶ a similar issue was before the Court of Appeal. The issues for determination were-

- Whether the police permit or any authority is required for holding a rally or procession in any part of the Federal Republic of Nigeria? and
- whether the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990, which prohibited the holding of rallies or processions without a police permit are not illegal and unconstitutional having regard to section 40 of the 1999 Constitution and Article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act (Cap 10) Laws of the Federation of Nigeria 1990.

In resolving these issues, the court held that the Public Order Act does not only impose limitation on the right to assemble freely and associate with others, which right is guaranteed under section 40 of the 1999 Constitution of the Federal Republic of Nigeria, it leaves unfettered the discretion on the whims of certain officials, including the police. The Public Order Act so far as it affects the right of citizens to assemble freely and associate with others, the sum of which is the right to hold rallies or processions or demonstration is an aberration to a democratic society, it is inconsistent with the provisions of the 1999 Constitution. The result is that it is void to the extent of its inconsistency with the provisions of the 1999 Constitution. In particular section 1(2), (3)(4)(5) and (6), 2, 3 and 4 are inconsistent with the fundamental rights provisions in the 1999 Constitution and to the extent of their inconsistency they are void.

Likewise, in Ghana, in *New Patriotic Party v Inspector-General of Police*¹⁷, on 3 February 1993 the police in Sekondi in the Western Region granted the plaintiff a permit to hold a rally on 6 February 1993 in Sekondi. However, on 5 February 1993 the police withdrew the permit and prohibited the holding of the rally. Yet again on 16 February 1993 the plaintiff in conjunction with other political parties embarked on a peaceful demonstration in Accra to protest against the 1993 budget of the Government of Ghana. They were arrested and charged to court for the offence of demonstrating without a permit. The court held as follows:

“In construing article 21(1)(d) and (4) of the Constitution, 1992, therefore, it is clear (1) that the concept of consent or permit as prerequisites for the enjoyment of the fundamental human right to assemble, process or demonstrate is outside their purview. Sections 7 and 8 of NRCDC 68 are consequently patently inconsistent with the letter and spirit of the provisions of article 21(d) of the Constitution, 1992, and are unconstitutional, void and unenforceable; and (2) some restrictions as are provided for by article 21(4) of the Constitution, 1992, may be necessary from time to time and upon proper occasion. But the right to assemble, process or demonstrate cannot be denied. The sections of NRCDC 68 which formed the basis of the plaintiff's writ were ex facie unconstitutional, void and unenforceable. It is for these reasons that the plaintiff's writ succeeded, and the declarations were granted and the orders made.”

¹⁶(2007) LPELR-8217 (CA)

¹⁷(2001) AHRLR 138 (GhSC 1993)

It is clear that section 5 of the Public Order Act which is one of the laws the plaintiffs are alleged to have violated is unconstitutional in the first place because it clearly violates section 25 of the Constitution of The Gambia.

Violation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Article 4(1) provides:

“Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited”.

See also Article 3 of the Protocol

The defendant has clearly failed in upholding this protection for the female victims, the **27th and 28th plaintiffs** (*see Annexures A8 and A9*), as required by Articles 3 and 4(1) of the Protocol.

Article 25 of the protocol further provided:

*“States Parties shall undertake to:
a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated”*

The defendant has violated the rights of the 27th and 28th plaintiffs and has grossly failed in its duty of providing appropriate remedies to the women whose rights have been violated.

8. ORDERS SOUGHT BY THE APPLICANT:

1. **A DECLARATION** that section 5 of the *Public Order Act* of the Republic of The Gambia Chapter 22-01 is in violation of Article 11 of the African Charter on Human and People's Rights.
2. **A DECLARATION** that the arrest, detention, charge, purported trial and imprisonment of the plaintiffs for offences under the Public Order Act were in violation of Articles 4, 7 and 11 of the African Charter on Human and People's Rights.
3. **A DECLARATION** that the arrests and detention of the plaintiffs on 14th April 2016 and 16th April 2016 were arbitrary, unlawful and in violation of Article 11 of the African Charter on Human and People's Rights.
4. **A DECLARATION** that the torture, and/or cruel, inhuman and degrading treatment of the plaintiffs by the defendant and its agents violated Articles 4 and 5 of the African Charter on Human and People's Rights.
5. **A DECLARATION** that the purported trial of the plaintiffs without giving them the opportunity to be defended by counsel of their choice, violated Articles 6 and 7 of the African Charter on Human and People's Rights.

6. **A DECLARATION** that the torture and/or cruel, inhuman and degrading treatment and abuse of the 27th and 28th plaintiffs, violated Articles 3, 4(1) and 25 (A) of The Protocol to The African Charter On Human and People's Rights on the Rights of Women in Africa
7. **A DECLARATION** that the torture to death, and/or arbitrary and extra judicial killing of Ebrima Solo Sandeng (deceased) in circumstances admitted by the defendant amounted to violation of Article 4 of the African Charter on Human and People's Rights.
8. **A DECLARATION** that the arrest, detention, trial and imprisonment of the plaintiffs have the consequence of denying the 32nd plaintiff, as an opposition political party, from effectively participating in the general elections slated for later in 2016 and denying the plaintiffs their right to participate in the elections as a result of their political opinion or affiliation, therefore violates Articles 2 and 13 of the African Charter on Human and People's Rights.
9. **A DECLARATION** that the defendant has failed to recognize, promote and protect the rights of the plaintiffs and to take measures to give effect to their rights as provided under Articles 4, 5, 6, 7, and 11 of the African Charter on Human and People's Rights.
10. **A DECLARATION** that the defendant has failed to recognize and promote principles of democracy and good governance as envisaged by the ECOWAS Protocol on Democracy and Good Governance.
11. **AN ORDER** directing the defendant to set up an independent panel of inquiry to look into the events of the 14th and 16th of April 2016, and also determine the persons responsible for the torture and ill treatment of the plaintiffs and to provide credible measures taken to discipline, dismiss and prosecute the police officers involved.
12. **AN ORDER** nullifying the purported charge, trial and imprisonment of the plaintiffs on basis of the Public Order Act and immediate release the plaintiffs from prison.
13. **AN AWARD** of damages in the sum of 10 million Dalasi to each of the 1st to 31st plaintiffs for the injuries sustained by the plaintiffs as a result of their torture and physical abuse by agents of the defendant, and their arrest and unlawful detention.
14. **AN AWARD** of compensation in the sum of 30 million Dalasi to the estate of Ebrima Solo Sandeng (deceased) through the 32nd plaintiff for the unlawful deprivation of life, and associated loss to the relatives and family members.
15. **AN ORDER** directing the defendant to release the body of Ebrima Solo Sandeng (deceased) to his family and to the 32nd plaintiff for proper burial in accordance with highly respected African values and culture.
16. **AN ORDER** restraining the defendant from harassing, arresting, detaining, charging, trying or otherwise intimidating any member of the 32nd plaintiff in respect of this matter

or any other matter, and to allow the members of the 32nd plaintiff exercise their rights to participate, vote and elect their representatives, and express political opinion as enshrined in Articles 2 and 13 of the African Charter on Human and People's Rights.

17. Any other order the Honourable Court considers necessary and which meets the justice of this case, including any order to ensure that the implementation of the judgment and orders made in this case are monitored.

9. NATURE OF EVIDENCE IN SUPPORT:

A. Documentary & Viva Voce:

The following documents are attached as Annexures

Annexures

A1 – Statement on oath of Outshine Darboe, the 1st plaintiff

A2 – Statement on oath of Femi Peters, the 3rd plaintiff.

A3 – Statement on oath of Lamin N Dibba, the 4th plaintiff.

A4 – Statement on oath of Fanta Darboe-Jawara, the 15th plaintiff

A5 – Statement on oath of Juguna Suso, the 17th plaintiff.

A6 – Statement on oath of Lamin Sonko, the 21st plaintiff

A7 – Statement of oath of Nogui Njie, the 26th plaintiff

A8 – Statement on oath of Fatoumatta Jawara, the 27th plaintiff.

A9 – Statement on oath of Fatou Camara, the 28th plaintiff.

A10 – Statement on oath of Ebrima Jadama, the 30th plaintiff

A11 – Statement on oath of Lamin Jatta, the 5th plaintiff.

B1 – Originating summons for writ of habeas corpus for production of Ebrima Solo Sandeng before high court of the Gambia.

B2 – Further affidavit in opposition

B3 – Affidavit in opposition

B4 – Charge sheet in Criminal Case No: KMC/CC/106/16

B5 – Charge sheet in Criminal Case No CH/179/16/CR/060/AO

B6 – Charge sheet in Criminal Case No HC/179/16/CR/060/AO

B7 – Charge sheet in Criminal Case No CH/178/16/CR/059/AO

B8 – Public Order Act Chapter 22:10.

B9 - Statement by Ousainou Darboe that was prevented from being read to the court.

B10 - Judgment of the court delivered by Hon. Justice Eunice Oshim Dada on 20th July 2016.

Dated this _____ day of _____ 2016.

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Chinonye E. Obiagwu, Esq.

Alero Eyetsemitan (Ms)

Yusuf Abdulkareem

Counsel to the Plaintiffs.

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For service on

The defendant

The Republic of The Gambia

Through the Honourable Attorney General

Attorney General's Chambers, Ministry of Justice

Banjul, The Gambia.