



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

HOLDEN AT ABUJA, IN NIGERIA

On Wednesday, the 3rd day of July 2013

"

General List No. ECW/CCJ/APP/21/22/23/11

Judgment No. ECW/CCJ/JUD/07/13

In the case

Between

Aziagbede Kokou and 33 Others,

Atsou Komlavi and 4 Others, and

Tomekpe Lanou and 29 Others

APPLICANTS

And

Republic of Togo

DEFENDANT

JUDGMENT ON THE MERITS OF THE CASE

Before their Lordships

Hon. Justice Awa Nana Daboya

Presiding

Hon. Justice Hansine N. Donli

Member

Hon. Justice Clotilde Medegan Nougbo

Member

Assisted by Maitre Athanase Atannon

Registrar

PROCEDURE ...

1. By different requests all dated 22 July 2011 and lodged at the Registry of the Court on 8 August 2011, Mr. Aziagbede Kakou and 33 Others, Mr. Tomekpe Abra Lanou and 29 Others, as well as Mr. Atsou Komlanvi and 4 Others brought their case before the Court, for the purposes of asking the Court to find that the Republic of Togo violated Articles 19 and 21(1) and (2) of the 14 October 1992 Constitution of Togo, Articles 5 and 7(1)-d of the African Charter on Human and Peoples' Rights, Articles 7, 9(3) and 14(3)-c of the International Covenant on Civil and Political Rights, Articles 3 and 5 of the Universal Declaration of Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. By three separate pleadings lodged on 13 August 2011 at the Registry of the Court in response to each of the requests brought by the Applicants, the Republic of Togo raised an objection as to admissibility, for lack of locus standi and capacity to sue, on the part of the Applicants.
3. The Republic of Togo equally lodged on the same date at the Court Registry, its Memorial in Defence to each of the three cases.
4. Each Party was duly served with the written pleadings filed by the other Party.
5. The Court heard the Parties on 30 October 2012, at which hearing it joined the different Applications. The Court equally heard the Parties on 11 December 2012 and 18 April 2013.

AS TO THE FACTS OF THE CASE

6. In the course of the year 2005, during the electoral period, various sections of the Togolese society were shaken by violent incidents. The victims of those violent acts, with the assistance of the Coalition of Associations Against Impunity in Togo (CACIT), constituted a civil party and lodged various complaints: before the Doyen of investigating judges at the First Instance Court of Lome, where the victims in question were the Applicants Aziagbede Kakou and 34 Others; before the investigating judge at the Court of First instance of Amlame, the victims concerned being Atsou Komlavi and 4 Others; and before the investigating judge at the Court of First Instance of Atakpame, where the victims were

Tomekpe Abra Lanou and 29 Others. They all filed complaints against the Republic of Togo.

7. From the time they lodged the complaints, between 13 October 2006 and 26 October 2006 (in the case of Aziagbede Kakou and Others), 1 October 2008 and 25 August 2009 (as regards Atsou Komlavi and Others), and 1 October 2008 and 25 August 2009 (concerning Tomekpe Abra Lanou and Others), and regardless of the numerous steps taken by the lawyers of CACIT and the monitoring of the complaints, which had been lodged for a period varying from 1 year to 6 years, the case had still not been heard.

ORDERS AND REQUESTS SOUGHT FROM THE COURT

Orders and requests sought by Aziagbede Kokou and 34 Others, Atsou Komlavi and 4 Others, Tomekpe Lanou and 29 Others

8. The Applicants ask the Court to adjudge and declare:
 - That the beatings they were subjected to till they lost consciousness, the blows and serious wounds inflicted on them, and the death of some of the victims, are a flagrant and manifest violation of their fundamental humanrights, as to their right to life and the safety of their persons; and that the acts in question constitute acts of torture, in obvious violation of the provisions of Article 21(1) and (2) of the 14 October 1992 Constitution of Togo, Articles 4 and 5 of the 27 June 1981 African Charter on Human and Peoples' Rights, Articles 3 and 5 of the 10 December 1984 Universal Declaration of Human Rights, Article 7 of the 16 December 1966 International Covenant on Civil and Political Rights, and the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - That the manifest intention of the Judiciary of Togo not to institute an inquiry into the complaints lodged by the Applicants, deposited between 13 October 2006 and 26 October 2010, is a violation of Article 19 of the 14 October 1992 Constitution of Togo and the provisions of Article 7(1)-d of the 27 June 1981 African Charter on Human and Peoples' Rights;
 - That the Republic of Togo encourages impunity by failing to institute an inquiry into the complaints, in violation of Point 6(a) of the 23 October 2002 Robben Island Guidelines.

9. They equally ask the Court to:

- Declare that the Republic of Togo violated fundamental human rights, notably the right to life and safety of the human person, consequent upon the acts of torture perpetrated by the law enforcement agents;
- Order the Republic of Togo to enable the Applicants exercise their right to fair trial within the shortest possible time;
- Order the Republic of Togo to clarify the criminal charges brought, in terms of torture, and establish and acknowledge the State and individual responsibility for the crimes committed against the victims and their families, by setting up an immediate and in-depth inquiry;
- Order the Republic of Togo to fight against impunity by taking effective measures to bring to justice those responsible for the acts of torture and the ill treatments.
- Order the Republic of Togo to effect prompt reparation for the harms done by avoiding unnecessary delays in the settlement of the case and in the implementation of the decisions and judgments awarding reparation for the victims.

Orders and requests sought by the Republic of Togo

10. The Republic of Togo asks the Court to:

- Find that the public proceedings have not yet been set in motion owing to the non-payment of the guarantee fee fixed by the investigating judge of the Lome Court of First Instance;
- Dismiss purely and simply, the requests brought by the Applicants, in all their intents and purposes;
- Ask the Applicants to bear the costs;
- Find that through the mechanism of the Justice, Truth and Reconciliation Commission (CJVR), the Republic of Togo has inquired into the criminal charges brought;
- Declare in favour of the Republic of Togo, that the latter will award compensation for the victims, following the recommendations of the CVJR.

JURISDICTION OF THE COURT AND ADMISSIBILITY OF THE APPLICATION

Arguments of the Applicants

11. The Applicants submit that the Application is admissible on the grounds of Articles 9(4) and 10 of the Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol, which provide respectively: *"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State... "Access to the Court is open to ... individuals on application for relief for violation of their human rights"*. They further submit that since human rights are inalienable, timeless and sacred, they cannot suffer any form of limitation whatsoever.

Arguments of the Republic of Togo

12. The Republic of Togo argues that it is a cardinal principle in judicial procedural law that any person who initiates an action in court shall justify his locus standi and that one of the essential conditions is a clear, obvious and precise identity of the applicant. It further argues that the **court before which** the case is brought shall ensure that the (cant(s) really exist(s). But, as contends the Republic of Togo, the identification of the Applicants is imprecise, and this springs serious doubts as to whether the Applicants truly exist or not.
13. Furthermore, the Republic of Togo argues that the instant suit was filed upon the initiative of the Coalition of Associations Against Impunity in Togo (CACIT), whose President is no other person than Maitre Zeus Ajavon. The Republic of Togo alleges that CACIT is indeed a political organisation whose links with political parties publicly known. It affirms, on that ground, that all forms of political intrigues are possible, towards coming up with a schedule of activities for justifying the finances engaged in or for vilifying the Republic of Togo, the latter entertaining fears that the national and regional judicial institutions may thereby be manipulated by way of intrigues in the court procedure.

14. The Republic of Togo submits that if Plaintiff Counsel fails to justify the true existence of the Applicants by means of irrefutable legal evidence, it shall be appropriate to declare the action brought by the Applicants as inadmissible for lack of locus standi and lack of capacity to sue in court.

Analysis of the Court

Regarding jurisdiction

15. In several of its judgments, the Court has consistently held that its jurisdiction shall be upheld whenever an application submitted before it invokes human rights violation arising from the provisions of Article 9(4) of the Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol, which provides: "*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*" (Refer notably to: *Judgment on Case Concerning Hissein Habre v. Republic of Senegal*, 14 May 2010, §53, §58 and §59; *Judgment on Case Concerning Alhaji Mohammed Ibrahim Hassan v. Gombe State and Federal Republic of Nigeria*, 15 March 2012, §38; *Judgment on Case Concerning Sa'adatu Umar v. Federal Republic of Nigeria*, 12 June 2012, §16).
16. Considering the circumstances of the case, notably the charges brought, the arguments and pleas in law invoked, as well as the orders sought by the Applicants, the Court is of the view that the substance of the dispute centres essentially on alleged human rights violations which occurred on the territory of the Republic of Togo, a Member State of ECOWAS. The Court therefore adjudges that it has jurisdiction to adjudicate on the requests brought.

Regarding admissibility

17. Article 10(d) of the Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol provides: "*Access to the Court is open to (...) individuals on application for relief for violation of their human rights; the submission of application for which shall:*
- (i) *Not be anonymous; nor*
 - (ii) *Be made whilst the same matter has been instituted before another International Court for adjudication.*"

- 18; Thus in the terms of those provisions, even where the jurisdiction of the Court is established, an application whose subject matter concerns human rights violation, shall be admissible when three criteria are met: the applicant's status as a "victim" must be established, the non-anonymous nature of the application, and the absence of litispence before another international court or tribunal.
19. Those criteria are not exhaustive, and notably, the Court has had to set out, in various instances, other criteria of admissibility.
20. Thus, an application on human rights violation which at the time of lodgement does not exhibit any international nature, and proves to be premature or precocious, may be declared inadmissible (See: *Registered Trustees of Jama'a Foundation & 5 Others v. The Federal Republic of Nigeria, Attorney General of the Federation and Minister of Justice*, 1 December 2012, §57, §58, and §63).
21. In the instant case, the Republic of Togo contends that the Application is inadmissible on the ground that the Applicants have no locus standi and lack the capacity to sue. It argues that barring the production of irrefutable evidence as to the real identity and physical existence of the Applicants the Court must conclude that the Applicants have neither locus standi nor capacity to sue before court.
22. The Parties pleaded their submissions on this issue at the hearing of 30 October 2012. Then at the hearing of 18 April 2013, pursuant to Article 16 (formerly Article 15) of the Protocol on the Court and Article 58 of the Rules of the Court, the Court asked Plaintiff Counsel to furnish it with an exhaustive list of the victims, indicating their complete identity, age, address, exact number, and other points for reference (like evidence regarding wounds and the aftereffects alleged by the victims).
23. On 14 May 2013, Plaintiff Counsel produced:
- A list of victims of the 2005 violent incidents;
 - Nine proofs of evidence or leads to evidence;
 - Four death certificates out of the 13 alleged cases of death.

24. The Court is of the view that pursuant to paragraph (d) of the new Article 10 of the Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol, examining the admissibility of the Application must be done in the light of the three criteria enumerated in paragraph 18 above, even if the Court has set out other criteria for admissibility in its case law. In that regard, the Court emphasises that the status of a victim is a concept which must be examined separately and independently of concepts such locus standi or capacity to sue. To claim to be a victim, there must exist a sufficiently direct link between an applicant and the prejudice he deems to have suffered as a result of the alleged violation.

25. In the instant case, the Court finds that the Applicants allege violation of their right to life and the security of their human persons, and they complain of acts of torture committed against them. Furthermore, they allege violation of their right to fair trial and the right of appeal, as a result of the undue delays of the Judiciary of Togo in trying the case they filed following the violent incidents they were subjected to.

26. In the light of the foregoing circumstances, the Court is of the view that the Applicants may be considered as victims of the alleged acts.

27. Besides, the Court finds that the same case is not pending before any other competent International Court and the requests brought are not anonymous. The Court therefore adjudges that the requests brought are admissible.

ANALYSIS OF THE ALLEGED HUMAN RIGHTS VIOLATIONS AND THE REQUESTS BROUGHT

28. An analysis of the alleged violations and the requests brought must be made in relation to the subject matter of the dispute as it emerges from the orders sought by the Applicants. In that regard, for the Court, it is trite that the subject matter essentially centres on three crucial points: (1) finding the various human rights violations arising from the alleged acts of violence, and their effects on the Applicants (2) finding the human rights violations arising from the failure to institute a trial into the complaints lodged (3) the risk of impunity, fostered by the Togolese authorities, in failing to conduct a trial into the complaints brought by

the Applicants The - Court now sets out to examine, each of these grievances.

A. CONCERNING VIOLATION OF THE RIGHT TO LIFE, THE SECURITY OF THE HUMAN PERSON, AND PRAYERS TO THE COURT TO FIND ACTS OF TORTURE RESULTING FROM VIOLENT ACTS

Arguments of Aziagbede Kokou and 34 Others, Atsou Komlavi and 4 Others, Tomekpe Lanou and 29 Others

29. The Applicants allege that, at Lome (in the case of Aziagbede Kokou and 34 Others), Amlame (as regards Atsou Komlavi and 4) and Atakpame (concerning Tomekpe Lanou and 29 Others), where they respectively reside or are established, the law enforcement agencies or security forces of the Republic of Togo perpetrated violent acts against them and members of their families. They notably claim that some of them were beaten to bleeding point, and others, to death; that some were maltreated and sprayed with tear gas, while others were shot. They affirm that these acts resulted in the violation of their physical integrity, in some instances, irreversibly. That some of them now bear scars of the lifetime effects of those violent acts, while others have died in atrocious conditions. They further state that they suffered material damage psychological harm.

30. They argue that such acts on the part of the Republic of Togo constitute cruel, inhuman or degrading treatment, and that the said acts violate human dignity and security of the human person. They conclude that there is violation of Article 21(1) and (2) of the Constitution of Togo, Articles 4 and 5 of the African Charter on Human and Peoples' Rights, Articles 3 and 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and equally, violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in spirit and letter.

Arguments of the Republic of Togo -

31. The Republic of Togo contends that, it is *apparent from the copies of pleadings* lodged as evidence by the Applicants in the case file, that the alleged perpetrators of the said acts, which they claimed to be victims of, were allegedly unmasked armed persons dressed in military combat

Trousers. The Republic of Togo affirms that in such circumstances, it shall be crucial to know whether the persons in question were officers or agents of the Republic of Togo to such extent as to warrant that their acts incur a blame on the Republic of Togo.

32. The Republic of Togo submits that, even if the alleged facts were attributable to the law-enforcement agents and security forces of the Republic of Togo, the Republic of Togo may not be held automatically accountable for their acts.

33. Indeed, the Republic of Togo argues that by virtue of the jurisprudential principle that the State may not be systematically held vicariously liable for offences committed by its officers, when an officer acts ultra vires with obvious ill intent, he commits an offence for which he is personally liable, independently of his assigned official duty. In that circumstance, as maintained by the Republic of Togo, the officer cannot render the State liable, and the competent criminal or correctional body shall assume the power to receive such a matter and accord reparation.

34. It further argues that when the offence committed an officer of State is in line with the performance of his duties, such offence shall be blamable on the State and not on the officer, and in such matters, the Judge with competence over criminal or correctional matters has no powers to grant reparation, due to the principle of separation of powers between the Judiciary and the Executive.

35. In support of this argumentation, the Republic of Togo asserts that it was because the Applicants were convinced of such separable nature of the liability for offences, as alleged to have been committed by the armed forces, that they constituted a civil party and instituted proceedings before the investigating judge, when the cause of action arose. It further submits that even bringing the matter before the investigating judge does not render the targeted persons in the complaints guilty, by reason of the principle that every suspect is presumed innocent till his guilt is proved through a court of trial which avails the suspect of all the indispensable guarantees for his defence, in accordance with Article 18 of the Constitution of Togo in force, Article 7(b) of the African Charter on Human and Peoples' Rights, and Article 11 of the international Covenant on Civil and Political Rights.

36. The Republic of Togo concludes that once no court decision has been made declaring that its law-enforcement agents were responsible for the acts complained of by the Applicants, the Honourable Court cannot lay blame on the Republic Togo for the alleged violations or ask the Republic of Togo to fulfill the requests for reparation sought by the Applicants.

Analysis of the Court

Regarding allegations of torture and human rights violations which may have resulted from acts of violence, and related requests

37. Within the circumstances of the instant case, the Court is of the view that it should have jurisdiction to adjudicate on the matter only if, first and foremost, there were sufficient factors which enable it to conclude that the Republic of Togo was liable for the charges brought, and of such a nature as to render the Republic of Togo internationally liable. **But, it is incontrovertible, that the objective of the proceedings instituted before the Togolese courts is to look for, identify and punish the masterminds of the criminal acts of violence and torture; and the court proceedings are still pending.**
38. As things stand, the court may not make finding concerning the criminal nature of the charges brought, or ascribe any blame whatsoever against the Republic of Togo, without unduly interfering in the conduct of the proceedings pending at the national level, and without violating the freedom of the judge at the domestic court.
39. Furthermore, even though the Court is entrusted with the duty to establish the facts, the Court is nevertheless of the view that for it to set that mandate in motion, consideration must be given to the pragmatic approach whereby appropriate importance is accorded to the proximity between the charges made and the judge at the domestic court, just as the same importance must be given to the prerogatives of the judge at the domestic court.
40. The Court finds that it is not within its human rights protection mandate to substitute its own viewpoint on the facts of a case for that of the domestic courts seized with the same case, in terms of determining the authenticity of certain exhibits pleaded in relation to charges of a

criminal nature. This issue would have been completely different **if** the question before the Court were to be limited to determining the fairness of the entire procedure which may have been employed at the national level.

41. In the instant case, the Court is of the view that the judge at the domestic court, before which the case is filed, shall examine the charges made in the complaints which are lodged before him.
42. Consequently, the Court adjudges that the application asking the Court for a declaration on the alleged human rights violations, arising from acts purported to have been perpetrated and attributed to the law-enforcement agencies **and** security forces of the Republic of Togo, is premature; and that it is ripe and appropriate therefore to declare that the allegations and requests made thereto are inadmissible as things stand, since the procedures are still pending before the domestic courts.

B. CONCERNING THE RIGHT TO FAIR TRIAL IN REASONABLE TIME

1. Arguments of the Applicants

1.1. Arguments of Aziagbede Kokou and 34 Others

43. The Applicants allege that after the events of 2005, with the assistance of Coalition of Associations Against Impunity in Togo (CACIT), they filed a case before the Doyen of investigating judges at the Court of First Instance of Lome, with complaints against the Republic of Togo, asking that a trial be instituted on the charges brought, for which they were victims. They further contend that since 13 October 2006 and 26 October 2010, the dates on which their complaints were lodged, none of them had been called for the hearing of the case, despite the numerous steps taken by the lawyers of CACIT and the constant monitoring of the case by CACIT. They state that it has been six (6) years since most of the complaints were lodged, while for others, one (1) year has lapsed, since the case was filed before the court. They therefore affirm that under such circumstances, it can be said that the complaints have fallen victim to intentional bureaucratic blockades contrived by the Judiciary.

44. They maintain therefore that the resultant effect of this state of affairs is a violation of Article 19 of the 14 October 1992 Constitution of Togo.

the provisions of Article 7(1)-d of the 27 June 1981 African Charter on Human and Peoples' Rights, which essentially endorse the right of every human being to be tried or heard in a reasonable time by an impartial and independent court or tribunal.

1.2 Arguments of Atsou Komlavi and 4 Others

45. They allege that they filed their case before the investigating judge of the Court of the Court of First Instance of Amlame, located about 200 kilometres from Lome; and that for 4 years, for some of them, and 3 years, for others, their complaints have not been called for hearing in court.

1.3 Arguments of Tomekpe Lanou and 29 Others

46. They allege that 4 years have elapsed, and for others, 3 years, since they filed their case before the investigating judge of the Court of the Court of First Instance of Atakpame; and that as at the time they brought their case before the Honourable Court, their case had still not been called for hearing.

2. Arguments of the Republic of Togo

47. According to the Republic of whereas the complainants state in their Application that since the lodgment of their complaints between 1 October 2008 and 25 August 2009, numerous steps and monitoring by the lawyers of CACIT have been engaged in, without indicating precisely which of them, it is apparent from the exhibits filed among the pleadings in the case file before this Honourable Court, and communicated to it, that certain, procedural formalities were not fulfilled, notably the payment of a guarantee fee which is fixed on the orders of the investigating judge, so as to set the public proceedings in motion, in accordance with Article 71 of the Togo Code of Criminal Procedure, which provides that *"The civil party that initiates a public action shall if he has not obtained legal aid pay a guarantee of a fixed sum to the registry upon an order of the investigating judge, failing which his complaint may not be admitted."*

48. The Republic of Togo further contends that in line with the procedure practised in Togo, the fixing of the amount to be paid as guarantee fee is preceded by the formality which confirms the complaint before the investigating judge; and the Republic of Togo asks whether the Applicants have fulfilled the said formality, and that at any rate, evidence must be provided to that effect.
49. The Republic of Togo thus maintains that the failure of the investigating judge to sit or his failure to adjudicate at a speed convenient to the Applicants may not be attributable to the Republic of Togo, since the latter, in line with the constitutional principles, cannot interfere with the work of the trial judge.
50. The Republic of Togo further contends that any proven default on the part of a judge seized with a case entitles a complainant to initiate an action against the judge concerned so as to bring disciplinary procedure against him pursuant to Articles 28, 29 and 30 of the Constitutive Law No. 96-11 of 21 August 1996 on the Status of Judges. It further affirms that an inspectorate division of the judicial services exists for the purpose of helping litigants bring cases against unscrupulous judges, in procedures which resulted in the implementation of the above-mentioned decision.
51. The Republic of Togo concludes that unless the Applicants produce evidence to prove that they have explored those avenues without success, the Honourable Court may find that there are mechanisms for addressing the Applicants' complaints at the local level, and that if they have had no satisfaction for their complaints, it is not as a result of any fault of the Republic of Togo, but due to the Applicants' own fault.

Analysis of the Court

Regarding allegation of the right to be tried in reasonable time

52. The Court notes that the Applicants, who allege violation of the right to be tried in reasonable time, have all filed complaints and constituted civil parties before the investigating judges of Togo.

53. At the court hearing of 30 October 2012, Plaintiff Counsel affirmed that the Applicants had evidence on the payment of the guarantee fee as made to the investigation judges at Lome, Atakpame and Amlame. Upon the instructions of the Court, they communicated the said exhibits to the Court, which were duly served on the Defendant.
54. At the court hearing of 11 December 2012, the Republic of Togo received the said documents and therefore decided to abandon its legal claim concerning non-initialisation of the public action on grounds of non-payment of the guarantee fee by the Applicants, and withdrew all the observations and arguments it had adduced in connection with that claim.
55. In such circumstances, the Court notes that the Republic of Togo no more contests the claim brought by the Applicants as well as the allegation on violation Article 7(1)-d of the Charter. The Court adjudges that this aspect of the Application is not manifestly ill founded. The Court now sets out to examine the Applicants' pleas in law in regard to this point.
56. Article 7(1)-d of the African Charter on Human and Peoples' Rights provides: *"Every individual shall have the right to have his case heard. This comprises: ... the right to be tried within a reasonable time by an impartial court or tribunal."*
57. Now, it is incontrovertible that the acts of violence which followed the 2005 presidential elections in Togo adversely affected the human persons and properties of the victims, who were located in Lome, Atakpame and Amlame; that since then, the Applicants filed complaints before the investigating judges of those localities and constituted civil parties to the proceedings, and they paid the guarantee fees required by the laws of Togo. But since then, the case has not been called for hearing: for some of them, the time lapse so far has been up to 3 or 4 years, whereas for others, it is 7 years.
58. In the instant case, the Republic of Togo does not bring any argument which may justify such inaction on the part of its judicial services. The Republic of Togo rather advances the argument that it has taken measures to inquire into the complaints, so as to compensate the victims and fight against impunity.

... 59. In that regard, the Republic of Togo contends that, after the violent incidents which constituted the aftermath of the 24 April 2005 elections, and for the purposes of stamping out the cycle of violence which had marred the political life of Togo since 1958, the socio-political actors signed on 20 August 2006 a general political agreement which advocated for the setting up of a Truth, Justice and Reconciliation Commission (CVJR), whose mandate was spelt out by Presidential Decree No. 046/PR of 25 February 2009. In the terms of the said Decree, the Commission's remit, among others, was "... to determine the scope and effects of the human rights violations, and of the violent incidents which shook the very foundation of the country; to undertake in-depth investigations with persons, institutions, administrative set-ups, traditional, religious and political authorities, and the civil society; to carry out inquiries, towards compilation of the victims of the violent incidents or their heirs."

60. The Republic of Togo indicates that the period covered by the work of the Commission extends from 1958 to 2005. And, in line with its mandate, the Commission carried out inquiries and investigations in all the *prefectures* (local government administrative units) of the country. It submitted to the President of the Republic on 3 April 2013, its inquiry report, together with recommendations. The Republic of Togo maintains that in the course of the Commission's proceedings, everyone who wished to do so could gain access to the Commission. The Republic of Togo therefore submits that the matters complained of by the Applicants were already being investigated by the Commission -and that if the transitional justice system does not prevent the ordinary justice system from following its normal course, it had the credit of hearing all victims and collating all data which could serve as supporting evidence for their allegations, and finally it was worthwhile having them recorded in the programmes for reparation envisaged in the CVJR report.

61. The Republic of Togo argues that the mechanism of transitional justice provides the ordinary justice system with points of information and evidence which may enhance the settlement of cases pending before the ordinary courts, and that the next step would be the implementation of the recommendations, which consists of compensating victims.

62. The Republic of Togo asks the Court to find that inquiries have already been carried out on the incriminating charges, and to rule in favour of the Republic of Togo, that the latter will soon set out to repair the harms done.
63. The issue before the Court is to determine whether within the circumstances depicted above, it could be considered that the Republic of Togo's mechanism of Justice, Truth and Reconciliation Commission (CVJR) is consistent with its obligation under Article 7(1)-d of Charter, which makes it mandatory for it to ensure that the Applicants' cause is heard in reasonable time.
64. The Court notes that it is apparent from the averments of the Republic of Togo that in regard to the acts of violence which occurred and in setting up the CVJR, the national authorities of Togo intended to render inapplicable to the tragic events that took place, the penal law of Togo. No pleading filed in connection with the case, and no argumentation put forth, is the least inclined to that line of thought. Conversely, it cannot be denied that the Republic of Togo acknowledges that "the transitional justice system does not prevent the ordinary justice System from following its normal course".
65. In such circumstances, the Court is of the view that the inaction of the Togolese judicial authorities, in terms of investigating the complaints brought by the Applicants and examining their cause in accordance with Togolese law, during a period of 3 or 4 years for some, and 7 years for others; resulted in a situation where it had become clearly obvious that **the Applicants' right to have their cause examined in reasonable time had been violated.**
66. The Court adjudges that by acting in the manner it did, the Republic of Togo violated Article 7(1)-d of the African Charter on Human and Peoples' Rights; and it shall be appropriate to cease that violation by proceeding to conduct a prompt trial on the complaints brought by the Applicants, in such manner as to grant them their right to be heard in reasonable time.

C. CONCERNING THE RISK OF IMPUNITY OF THE ALLEGED VIOLATIONS

As to the admissibility of such grievance

67. The Applicants aver that the Republic of Togo encourages impunity by failing to institute an inquiry into their complaints, in violation of Point 16(a) of the 23 October 2002 Robben Island Guidelines, which deals with the directive principles and measures for the prohibition and prevention of torture and cruel, inhuman or degrading punishment or treatment in Africa.
68. The Republic of Togo invokes CVJR as a body put in place to fight against impunity.
69. The Court adjudges that when it is seized with a case of human rights violation, then it entrusted with the duty of examining, in the final analysis, whether or not there is a specific human rights violation. The Court strictly limits itself to determining whether the human rights enshrined in the international instruments recognised within the framework of ECOWAS were respected or not by the State complained of before the Court. The Court recalls, in this connection, that it has already ruled that the Applicants' right to be heard within reasonable time is violated and they must therefore be tried in reasonable time. Thus, it is not the duty of the Court to proffer general views on the attitude of a State. Consequently, the Court is of the view that this particular grievance brought by the Applicants is inadmissible and must therefore be dismissed. And there are no further grounds for considering the other pleas in law invoked.

DECISION

For these Reasons

70. The Court,

Adjudicating in a public hearing, after hearing both Parties, and after deliberation:

Adjudges that it has jurisdiction to adjudicate on the case;

Adjudges that the Applicants' request to the Court, asking it to find that there is violation of the right to life, security of the human person, and acts of torture resulting from acts of violence, which are rights enshrined in Articles 4 and 5 of the African Charter on Human and Peoples' Rights, is premature as things stand, and inadmissible;

Adjudges that the Republic of Togo violated the Applicants' right to trial in reasonable time, as enshrined in Article 7(1)-d of the Charter;

Consequently, the Court orders the Republic of Togo to ask its domestic courts to try the cases brought by Applicants promptly and in such manner as to render effective the Applicants' right enshrined in Article 7(1)-d of the Charter;

Dismisses the other pleas in law.

COSTS

71. Pursuant to Article 66(2) of the Rules of Procedure of the Court, the Court asks the Republic of Togo to bear the costs.

Thus made, declared and pronounced in French, the language of procedure, in a public session at Abuja, by the Court of Justice of the Economic Community of West African States (ECOWAS) on the day, month and year stated above.

72. And the following hereby append their signatures:

- Hon. Justice Awa Nana Daboya

Presiding

- Hon. Justice Hansine Donli

Member

- Hon. Justice Clotilde Medegan Nougbo

Member

Assisted by Maitre Athanase Atannon

Registrar

