



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

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

In the case of

AYIVIGAN DEDE NAOMI V. THE STATE OF TOGO.
Application N°: ECW/CCJ/APP/28/24 Judgment N°. ECW/CCJ/JUD/03/26

JUDGMENT

Delivered in

ABUJA

On 29 January 2026

CASE N°: ECW/CCJ/APP/28/24

JUDGMENT N° ECW/CCJ/JUD/03/26

AYIVIGAN DEDE NAOMI

APPLICANT

V.

THE STATE OF TOGO

RESPONDENT

BEFORE THEIR LORDSHIPS:

Hon. Judge Dupe ATOKI

Presiding

Hon. Judge Gberi-bè OUATTARA

Judge-Rapporteur/Member

Hon. Judge Edward Amoako ASANTE

Member

ASSISTED BY: Gaye SOW

Deputy Chief Registrar

I. REPRESENTATION OF THE PARTIES

1. The Law Firm known and called (SCPA) FEMIZA et Associés

Lawyers at the Lomé Bar in Togo

Counsel for the applicant

2. The Keeper of the Official Seals and Minister of Justice, Legal

Representative of the State of Togo, represented by Barrister TCHITCHAO

TCHALIM

Counsel for the respondent

II. JUDGMENT OF COURT

3. This judgment is the one delivered by the Court in a virtual public hearing pursuant to Article 8(1) of the 2020 Practice Directions on Electronic Case Management and Virtual Hearings.



III. DESIGNATION OF THE PARTIES

4. The applicant is

AYIVIGAN DEDE NAOMI, a Togolese national born on 28th August 2002, an apprentice seamstress residing in LOME in the Bè-Apéhémé neighbourhood (hereinafter "the Applicant");

5. The respondent is the Togolese State, a member state of the Community, signatory to the African Charter on Human and Peoples' Rights (ACHPR) and other international instruments relating to the protection of human rights (hereinafter "the Respondent").

IV. INTRODUCTION

6. The purpose of these proceedings is to examine the Applicant's request for a finding that the Respondent violated the relevant provisions prohibiting torture and cruel, inhuman, or degrading treatment, as well as the right to physical integrity and the right to physical and psychological rehabilitation of the child.

V. PROCEEDURE BEFORE THE COURT

7. On 18th November 2024, the Applicant filed an Application against the Respondent with the Court Registry. This Application was notified to the Respondent on 19th November 2024;

8. On 13th December 2024, the Respondent filed a request with the Court Registry for an extension of time to enable it to file a statement of defence. This request was notified to the Applicant on the same date;

9. On 12th February 2025, the Respondent filed a statement of defence with the Court Registry. This statement of defence was served on the Applicant on 13th February 2025;

10. On 10th March 2025, the Applicant filed a request for an extension of time to file her reply brief. This request was notified to the Respondent on 11th March 2025;

11. In reply, the Applicant filed a brief with the Court Registry on 28th April 2025. This reply brief was served on the Respondent on the same day;

12. By letter dated 30th April 2025, the Respondent requested that the case be adjourned to another hearing to allow it to file a rejoinder;

13. At the hearing on 15th May 2025, after hearing all the parties on the Respondent's request for the case to be postponed, the Court postponed the case to a later date, which it reserved the right to communicate to the parties;

14. On 29th May 2025, the Respondent filed a rejoinder with the Registry, which was notified to the Applicant on the same day;

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15. On 13th November 2025, both parties were represented at the hearing by their respective counsel.

The Court granted their various requests for an extension of time. After hearing the parties' counsel in their oral arguments on the merits, the Court reserved its decision on the date for judgment, to be communicated to the parties later;

VI. *ARGUMENTS OF THE APPLICANT*

a) *Statement of facts*

16. By Application registered with the Registry of the Court on 18th November 2024, AYIVIGAN Dédé Naomi, a Togolese national, brought an Application before the ECOWAS Court of Justice against the State of Togo for violation of her fundamental rights protected in particular by Articles 5 of the Universal Declaration of Human Rights (UDHR) of 10th December 1948, Articles 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR) of 27th June 1981, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 16th December 1966, Article 16.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10th December 1984, Articles 37 and 39 of the Convention on the Rights of the Child (CRC) of 20th November 1989;

17. The Applicant states that on 27th August 2019, at around 6 a.m., security forces were conducting an operation to arrest sellers of contraband fuel and seize their goods in the Bè-Apéhémé neighborhood where she lives;



18. She reports that the security forces chased the sellers of contraband fuel in order to seize their goods and opened fire to stop those who were trying to flee;

19. The Applicant explains that on that day, as she was going to the neighborhood store to buy food, she was shot in the left thigh as she was entering the store and collapsed. In shock, she fainted and was rushed home by witnesses. At the Bè-Apéhémé hospital, where she was immediately admitted, the bullet was removed, as attested by the initial medical certificate issued to her. At around 3 p.m., she was able to leave the hospital in a much weakened state and return home;

20. The Applicant states that approximately three (03) months after her discharge from the hospital, armed with her hospital bills, she went to the Central Criminal Investigation and Research Service (SCRIC) with her mother to make a statement. She states that at the end of their discussions with the people they met at the SCRIC, they were reassured by the latter's promise to call them back after analyzing the facts. However, this promise was not kept;

21. She adds that on 29th July 2021, she submitted a claim for compensation to the Minister of Security and Civil Protection, which has not been actioned;

22. The Applicant further states that this incident resulted in her being completely unable to move for approximately five (05) months and that, to this day, she continues to suffer the effects of the serious injuries sustained as a result of the actions of the security forces, as attested to by the report of Mr. Kossivi AMEGAH-ATSYON, Bailiff in Lomé.

b) *The pleas – in - law invoked*

23. The applicant invokes the violation of the following legal instruments:

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- Violation of Article 5 of the Universal Declaration of Human Rights (UDHR) of 10th December 1948;
- Violation of Articles 37 and 39 of the 1989 International Convention on the Rights of the Child;
- Violation of Articles 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR) of 27th June 1981;
- Violation of Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10th December 1984;
- Violation of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 16th December 1966;

c) Conclusions

24. The applicant solicits that may it please the Honourable Court

-To declare and adjudge that by shooting at her and wounding her in the thigh when she was in no way involved in the events that were the subject of their operation, the agents of the State of Togo violated the provisions of Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5 of the Universal Declaration of Human Rights, Article 5 of the African Charter on Human and Peoples' Rights, Article 7 of the International Covenant on Civil and Political Rights, and Articles 37 and 39 of the Convention on the Rights of the Child ;

- To declare and adjudge that the agents of the State of Togo also violated the right to the respect for her physical integrity, in violation of the provisions of Article 4 of the African Charter on Human and Peoples' Rights ;



- To declare and adjudge that by failing to respond to the Applicant's request for compensation, the Respondent did not take the necessary measures to facilitate her physical rehabilitation, even though she was a minor who had been subjected to torture and cruel, inhuman, or degrading treatment, in violation of the provisions of Article 39 of the Convention on the Rights of the Child (CRC).

25. The Applicant further seeks from the Court

- AN ORDER on the Respondent to investigate and punish the law enforcement and security officials who violated the above-mentioned provisions;

- AN ORDER on the respondent to provide compensation for the harm suffered, taking into account the relevant provisions of the Convention against Torture, in particular Article 14, as well as the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law adopted by the United Nations General Assembly on 16th December 2005, in its Resolution 60/147, in particular in the forms of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition ;

- AN ORDER on the defendant to pay her the sum of one hundred million (100,000,000) CFA francs in damages, pursuant to the provisions of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10th December 1984, and Articles 5 and 9 (5) of the International Covenant on Civil and Political Rights of 16 December 1966;

- AN ORDER on the Respondent to pay the costs;



VII. ARGUMENT BY THE RESPONDENT

a) Statement of facts

26. The Respondent states that on 27th August 2019, members of the Special Customs Intervention Unit (USID) who were on patrol were informed of the unloading of adulterated fuel in a garage in Bè-Apéhémé (P/Golfe) by a Volkswagen Passat vehicle with registration number TG-7099-AP belonging to Tchakondo Anass. Following this information, USID officers raided the garage in question, where they seized the transport vehicle and seventy-five (75) liters of fuel contained in three containers of twenty-five (25) liters each;

27. The Respondent reports that once the product and the transport vehicle had been seized, the officers were preparing to leave the premises when they were overwhelmed by a crowd, incited by leaders including Tchakondo Anass, Agbolodji Guy, and Améounou Kodjo;

28. The Respondent asserts that these individuals threw projectiles at the agents after barricading the exits to prevent them from leaving;

29. The Respondent states that, having been ambushed, the officers had to use their service weapons to fire warning shots in order to clear a leeway out of the premises;

30. The Respondent states that the backup team that was sent as a reinforcement was also subjected to the same barrage of stones and projectiles of all kinds. Finally, the patrol team managed to return to its unit, but with two officers wounded, one of them with a knife, and the two vehicles assigned to the patrol completely damaged and out of service;



31. The Respondent points out that it was more than two months after the events that the officers received information that some people had been injured by stray bullets during the warning shots taken;

b) Pleas – in - law invoked

32. The Respondent invokes the following legal argument:

- No violation of the rights invoked by the Applicant;

c) Conclusions

33. The Respondent requests that the Court

- To find that the statement of defence has been filed in accordance with the law and within the prescribed time limit;
- To declare that the Court lacks jurisdiction to hear the Application;
- To declare the Application inadmissible on the grounds of: (1) failure to exhaust domestic remedies and (2) failure to establish that the Applicant is a victim of human rights violations ;

In the alternative as to the merits of the case:

- To declare and adjudge that the State of Togo has not violated Article 5 of the Universal Declaration of Human Rights, Articles 4 and 5 of the African Charter on Human and Peoples' Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and even less so Articles 37 and 39 of the 1989 Convention on the Rights of the Child ;



Consequently

- To dismiss all claims, requests, and conclusions contained in the initiating Application of 18th November 2024, as unfounded due to the total lack of evidence of the alleged violations and ill treatment ;
- To order the Applicant to bear all costs.

VIII. JURISDICTION

Arguments of the Respondent

34. The Respondent recalls the provisions of Article 9 (4) of the Protocol on the Court, as amended by Supplementary Protocol A/SP.1/01/05 of 19th January 2005, which provides that: *"the Court has jurisdiction to determine cases of violation of human rights that occur in any Member State."* ;

35. The Respondent further invokes Article 10(d) of the same Protocol, as amended, which provides that: *"Access to the Court is open to individuals on application for relief for violation of their human rights."*;

36. The Respondent argues that, based on the above provisions, the ECOWAS Court of Justice has jurisdiction only to hear cases of human rights violations;

37. The Respondent alleges that it is clear from the facts of the case that no cruel, inhuman, or degrading treatment was inflicted on the Applicant because, having been ambushed by the angry crowd, the law enforcement officers had to fire warning shots into the air in order to extricate themselves from the crowd, and that this situation could not constitute intentional assault and battery, let alone torture and ill-treatment, as AYIVIGAN Dédé Naomi attempts to claim in her Application, especially since



the State agents did not deliberately target her in order to inflict injury or cruel, inhuman, or degrading treatment on her;

38. The Respondent concludes that the Applicant is not the victim of any violation of her rights by State agents and that, given that there was no violation of the Applicant's rights attributable to State agents within the meaning of the above provisions, the Court does not have jurisdiction to hear this case.

39. The Respondent states that the Court's jurisdiction derives, first and foremost, from the texts governing its jurisdiction and the nature of the issue raised by the Applicant, on the basis of the facts The Respondent alleges;

40. In support of its statements, The Respondent cites two judgments of the ECOWAS Court of Justice, namely Judgment ECW/CCJ/JUD/03/11 of March 17, 2011, *Bakary Sarre and 28 others v. Republic of Mali*, in which the Court ruled that *"its jurisdiction to rule on a given case depends not only on its texts but also on the substance of the Application initiating proceedings (...)"*; and Judgment ECW/CCJ/JUD/10/13 of November 6, 2013, *Chude Mba v. Republic of Ghana*, in which the Court ruled that *"as a general rule, jurisdiction is inferred from the applicant's claim and, in order to decide whether or not this Court has jurisdiction to hear the present action, it is necessary to rely on the facts as presented by the applicant."*;

41. On the basis of these arguments, the Respondent contends that human rights violations by a State presuppose the commission of deliberate acts or transgressions of the fundamental rights and freedoms to which every person is entitled. Such acts must be directly attributable to the State;



42. The Respondent asserts that, in the present case, the violations alleged by the Applicant were not committed intentionally or premeditatedly by it and that the State agents were forced to fire warning shots into the air in order to free themselves from the ambush in which they had fallen. The Respondent considers that the violations of rights alleged by the Applicant cannot be directly attributed to it;

43. The Respondent therefore concludes that, since there has been no violation of the Applicant's rights attributable to State agents, the Court does not have jurisdiction to hear the case;

Arguments of the applicant

44. The Applicant notes that the Respondent contests the jurisdiction of the Court on the grounds that no cruel, inhuman, or degrading treatment was inflicted on her;

45. She asserts that, in accordance with its case law, the jurisdiction of the ECOWAS Court of Justice as enshrined in Article 9(4) of its amended protocol cannot be called into question when the dispute relates to human rights violations;

46. The Applicant notes that the Court reaffirmed this position in particular in the case of *Soldier Alimu Akeem v. Federal Republic of Nigeria* in 2014 (ECW/CCJ/JUD/05/11) and in the case of *Kakali v. Republic of Niger* (ECW/CCJ/JUD/26/15);

47. The Applicant recalls that in the present case, the Respondent is a Member State of the Economic Community of West African States (ECOWAS) and that she alleges violations of her human rights by law enforcement officials on Togolese territory;



48. The Applicant points out that, as the Court has consistently emphasized (*SERAP and 10 Others v. Federal Republic of Nigeria and 4 Others*, 10th June 2014 - ECW/CCJ/JUD/16/14, etc.), "the mere allegation of a violation of human rights on the territory of a Member State is sufficient *prima facie* to justify the Court's jurisdiction over the dispute, without prejudice to the merits and validity of the complaint, which must be decided only after the parties have had the opportunity to present their arguments, with all the guarantees of a fair trial.";

49. She adds that the Respondent is bound by at least one legal instrument, such as the African Charter on Human and Peoples' Rights;

50. The Applicant recalls that, in the present case, she alleges violations of her human rights by law enforcement officials of the Togolese State, which occurred when she was 17 years old at the time of the events. She therefore concludes that, in accordance with its established case law and Article 9 (4) of its Protocol as amended, the Court has jurisdiction to hear the present case;

Analysis by the Court

51. The Court notes that its jurisdiction in human rights matters is governed by the provisions of Article 9-4 of Supplementary Protocol A/SP.1/01/05 of 19th January 2005, amending Protocol A/P.1/7/91 on the Court of Justice, which provides that: "The Court has jurisdiction to decide cases of violations of human rights that occur in any Member State." In numerous cases, the Court has affirmed that when it is seized on the strength of paragraph 4 of the new Article 9 of its Protocol, "where violations of human rights constituting community or international obligations of the Member State in question are alleged, it has jurisdiction to examine them" (See

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Judgment ECW/CCJ/JUD/03/11 of 17th March 2011, *Bakary Sarre and 28 others v. Mali*, §34 in *Law Reports of the Court* (2011), p.71; Judgment ECW/CCJ/RUL/03/10 of 14th May 2010, *Hissein Habré v. Senegal*, §§53, 57-59 in *CCJ, ECOWAS Law Reports* (2010), pp. 63-64);

52. The Court recalls that, according to its own case law, *"the mere invocation of violations falling within the jurisdiction of the Court is sufficient to establish that jurisdiction; the alleged violations fall within the jurisdiction of the Court in that it guarantees the rights provided for in the various international legal instruments for the protection of human rights"* (See Judgment ECW/CCJ/JUD/05/10 of November 8, 2010, *Mamadou Tandja v. Niger*, §18.1.b in *Reports of Judgments and Decisions of the Court* (2010), p. 118); or *"the mere reference to the international instruments mentioned above, which constitute the essence of the Community legal order in the field of human rights, implies the formal jurisdiction of the Court as determined by Articles 9 (4) with regard to subject matter and 10 (d) with regard to referral to the Court"* (See Judgment ECW/CCJ/JUD/09/11 of 7th October 2011, *Ameganvi Manavi Isabelle v. Togo*, §53 in *CCJ, ECOWAS Law Reports* (2011), p. 50);

53. The Court observes that, in the present case, the Applicant alleges a violation of the prohibition of torture and cruel, inhuman, or degrading treatment or punishment enshrined in Article 5 of the African Charter on Human and Peoples' Rights, Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the prohibition of subjecting children to torture, cruel, inhuman, or degrading treatment or punishment enshrined in Article 37 of the Convention on the Rights of the Child, the inviolability of the human person enshrined in Article 4 of the African Charter on Human and Peoples' Rights, the obligation of States Parties to take all measures to



facilitate the physical and psychological recovery and social reintegration of any child victim of abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, as enshrined in Article 39 of the Convention on the Rights of the Child;

54. The Court notes that the Applicant invokes five legal instruments for the protection of human rights, namely: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights;

55. The Court notes that the rights and obligations whose violations are alleged by the Applicant are among the human rights that it is responsible for protecting;

56. The Court recalls that the Respondent is a party to the African Charter on Human and Peoples' Rights, the instruments of ratification of which it deposited on 22nd November 1982, the International Covenant on Civil and Political Rights, to which it acceded on 24th May 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified on 18th November 1987, and the Convention on the Rights of the Child, which it ratified on 1st August 1990;

57. The Court considers that, as a Member State of the United Nations, the Respondent is bound to comply with the provisions of the Universal Declaration of Human Rights of 10th December 1948;

58. Since the Respondent is a Member State of ECOWAS and the alleged violations took place on the territory of that country, the Court concludes that all the conditions are met for it to declare itself competent to examine the Application, in accordance with its established case law;



59. Furthermore, the arguments raised by the Respondent to challenge the Court's jurisdiction essentially consist of asserting that there has been no violation of human rights attributable to its agents. Such arguments relate to the merits of the case and cannot be accepted as grounds for challenging the Court's jurisdiction;

IX. ADMISSIBILITY

Arguments of the Respondent

60. The Respondent raises the inadmissibility of the Application, on the one hand, on the grounds of failure to exhaust domestic remedies and, on the other hand, on the grounds that, in its view, the Applicant does not have victim status;

a) On the failure to exhaust domestic remedies

61. The Respondent argues that the ECOWAS Court of Justice is an international court responsible for protecting human rights in sub-Saharan Africa. It argues that the human rights protection system is unique in that the admissibility of individual appeals is not subject to the condition of prior exhaustion of domestic remedies;

62. The Respondent nevertheless maintains that the prior exhaustion of domestic remedies is a procedural rule of international law according to which, prior to bringing a case before an international court, the Applicant has an obligation to



submit the case to the national courts (AHRCP *Sébastien Germain Ajavon v. Benin*, n° 013/2017, March 29, 2019);

63. The Respondent notes that Article 35 (1) of the European Convention on Human Rights (ECHR) provides that : "*No Application shall be brought before the Court until all domestic remedies have been exhausted, as recognized by generally acknowledged principles of international law, and within a period of six months from the date of the final domestic decision.*"

64. It emphasizes that, as is clear from the case law of the African Court on Human and Peoples' Rights, in applying the rule of exhaustion of domestic remedies, the following three criteria must be taken into account, namely the availability, effectiveness, and adequacy of such remedies (Article 56(5) of the African Charter on Human and Peoples' Rights). The Respondent notes that in the case of *Norbert Zongo and others v. Burkina Faso*, for example, the African Court stated that "*the effectiveness of a remedy is its ability to remedy the situation complained of by the person exercising it.*";

65. The Respondent argues that, in the present case, the Applicant brought her allegations of human rights violations directly before the ECOWAS Court of Justice without first seeking justice through the competent national authorities. It concludes that the Applicant has not complied with the rule of exhaustion of domestic remedies;

66. The Respondent therefore considers that although before the ECOWAS Court of Justice this rule tends to be interpreted more broadly and flexibly than strictly and restrictively in favor of victims who have alleged human rights violations, the Applicant was obliged to first appear before the national courts in order to obtain redress for the specific prejudices allegedly caused by it. She failed to do so, even though there is no evidence that domestic remedies were unavailable or difficult to



access, such that they could not be exhausted, or that the domestic legal system did not offer real prospects of success without undue delay or inefficiency;

67. Finally, The Respondent asserts that it is clear that the rule of exhaustion of domestic remedies makes it possible to determine whether a State sufficiently protects human rights within its territory. This rule aims to safeguard the sovereignty of States and must therefore be interpreted more strictly;

68. The Respondent concludes that, since the Applicant has not exhausted domestic remedies, her application must be declared inadmissible;

69. The Respondent further argues that recourse to international courts is subsidiary to the remedies available under the domestic legal system of States. This rule is intended not only to safeguard the sovereignty of States but also to emphasize their responsibility to remedy any human rights violations falling within their jurisdiction;

70. The Respondent asserts that it is indeed primarily the responsibility of the States parties to international human rights treaties to ensure their effective implementation. It is only after domestic legal proceedings have failed, and therefore on a subsidiary basis, that individuals may bring their cases before the ECOWAS Court of Justice;

71. The Respondent adds that this rule of exhaustion of domestic remedies reflects the nature of the Court, which is not an appellate court but a subsidiary tool for the protection of human rights in the States. It points out that international human rights protection mechanisms are not substitute mechanisms for the implementation of human rights at the national level, but should be considered as tools to assist national authorities in establishing adequate protection of human rights within their territory. Individuals therefore have an obligation to first bring their cases before domestic

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courts, especially since States have established structures enabling them to seek appropriate remedies whenever their rights are violated;

72. The Respondent concludes that, in the present case, given that the Applicant did not consider it necessary to avail herself of the domestic remedies available to her before lodging the present Application, the Court must declare her application manifestly inadmissible;

b) Lack of victim status

73. The Respondent argues that the Application should be declared inadmissible because it does not reveal any violation of human rights attributable to it;

74. The Respondent asserts that human rights are standards that recognize and protect the dignity of all human beings. They govern life in society, as well as the relationships between individuals and States and the obligations of States towards them;

75. The Respondent explains that the victim of a human rights violation is the person whose rights are deliberately disregarded. It notes that the Applicant is making mere allegations and that she lists the Articles of the conventions without placing them in the context of the events and specifying how those articles were violated;

76. The Respondent states that, in the present case, the law enforcement officers had been forced to use their weapons, firing warning shots, in order to escape from the angry crowd and return to their unit with two officers injured by the rioters, as the two vehicles at their disposal had been put out of action. The Respondent states that



these officers acted in self-defence without targeting any particular person and without any intention to cause injury;

77. The Respondent concludes that the Applicant could not invoke torture or violation of her rights against State agents because the violations she alleges had not been established. The Respondent therefore requests that the Court should declare the Application inadmissible on the grounds that the Applicant did not qualify as a victim of human rights violations;

78. The Respondent explains that the Applicant is pretending to ignore that a victim of human rights violations is a person who has suffered harm, in particular an infringement of their fundamental rights, as a result of acts deliberately directed against them. The Respondent states that contrary to what the Applicant is trying to make the world believe, the officers did not deliberately target her because the warning shots fired were not directed at her. The Respondent argues that these shots were necessary to safeguard the lives of the officers;

79. The Respondent maintains that if the applicant suffered any injuries, they are covered by the officers' right to self-defense. It therefore considers that the applicant is wrong to allege that she is the victim of violations of her fundamental rights by law enforcement officers and requests the Court to declare the application inadmissible on the grounds that the applicant does not have the status of victim of human rights violations.

Arguments of the Applicant

a) On the prior exhaustion of domestic remedies

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80. The Applicant argues that the Respondent is wrong to raise in its defence brief the inadmissibility of the Application on the grounds that domestic remedies have not been exhausted;

81. She notes that in the judgment in *Sahabi Moussa v. the Republic of Niger* of 6th December 2016 (ECW/CCJ/JUD/28/16), the Court considered "*the Respondent's argument that the Applicant's action is inadmissible because he had unsuccessfully exhausted all domestic remedies before bringing it before the Court to be irrelevant, and considers that, in view of the above-mentioned texts, the exhaustion or non-exhaustion of those remedies has no bearing on any proceedings brought before it.*";

82. The Applicant adds that in this 2016 judgment, the Court stated that "*the Application is admissible since it meets all the formal requirements of Article 33 of the Rules of Procedure of 3rd June 2002, and Article 10 of the 19th January 2005 Supplementary Protocol.*" Thus, in accordance with the provisions of Article 33 of the Rules of Court and Article 10 of the 2005 Protocol, for the Application to be admissible, it must not be anonymous and the case must not have been brought before another competent international court;

83. The Applicant concludes that, in the present case, the Application complies with the conditions set out in the above-mentioned legal provisions and must therefore be declared admissible;

b) On the lack of victim status

84. The Applicant considers that the Respondent's assertion in its statement of defence that she does not have victim status to bring the case before the Court is unjustified. She points out that the provisions of Article 10 of the Supplementary

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Protocol governing referrals to the ECOWAS Court of Justice state that any victim of a human rights violation may bring a case before the Court;

85. She recalls that on the morning of 27th August 2019, when she was 17 years old, she went out to buy food and was unfortunately shot in the left thigh as a result of alleged "warning shots" fired by security forces;

86. The Applicant notes that in its judgment of July 13, 2015, *CDP and others v. State of Burkina* (ECW/CCJ/JUD/19/15) the Court stated that it sanctions, in principle, human rights violations that are "effective, real, and proven." Thus, based on the facts, it is clear that the violations she suffered were effective, real, and proven;

87. She adds that the Court recalled in the *Pawimondom v. Republic of Togo* judgment of 19th February 2018 (ECW/CCJ/JUD/06/18) that victims of human rights violations may bring proceedings before it provided that they have suffered personal harm that would justify their interest in taking action;

88. The Applicant asserts that, based on the facts of the case and the evidence submitted, in particular the consultation log and the medical certificate issued to her on 26th July 2021, by Dr. GOUNDO Djaré Yendoukoa, a surgeon at Bè Hospital, it is clear that she has suffered personal harm, thus justifying her interest in bringing proceedings before the ECOWAS Court of Justice;

89. The Applicant therefore concludes that the arguments put forward by the Respondent to deny her status as a victim appear unfounded and must be rejected;

Analysis by the Court



90. The Court recalls that the admissibility of Applications before it is governed by the provisions of Article 10-d of the 19th January 2005 Supplementary Protocol A/SP.1/01/05 amending Protocol A/P.1/7/91 on the Court;

91. Article 10-d of the Protocol relating to the Court, as amended, provides that:

"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."*

92. The Court notes that, in its established case law, it has always held that, for an Application seeking a finding of a violation of human rights to be admissible, three conditions must be met: the Applicant must be the victim of a violation of at least one of his or her fundamental rights, the Application must not be anonymous, and the Application must not have been brought before another competent international court. (See ECW/CCJ/JUD/07/13, judgment of 3rd July 2013, *Aziagbede Kokou v. Togolese Republic*, §18 in CCJ, ECOWAS Law Report (2013), p. 179; Judgment ECW/CCJ/JUD/08/13 of 3rd July 2013, *Assima Kokou Innocent and others v. Togolese Republic*, §32 in CCJ, ECOWAS Law Reports (2013), p. 201. See Judgment ECW/CCJ/JUD/07/20, *Sawadago Paul and 3 others v. Burkina Faso*, §30 ; Judgment ECW/CCJ/JUD/28/21 of 9th July 2021, *George Keita and Yacouba Mounkoro v. State of Mali*, §45 ; Judgment ECW/CCJ/JUD/29/21 of 9th July 2021, *Madame Sessi Mélé v. State of Togo*, §73);



93. With regard to the objection of inadmissibility based on the obligation for Applicants to first exhaust domestic remedies, the Court notes that its case law is well established;

94. Indeed, it has already ruled that:

"(...) the objection relating to the non-exhaustion of domestic remedies has no bearing on the conditions for bringing an action before the Court for violation of human rights. The objection is (...) untenable." (See Judgment ECW/CCJ/RUL/04/07 of 14th March 2007, *Professor Etim Moses Essien v. the Republic of The Gambia and the University of The Gambia*, §28, in *CCJ, ECOWAS Law Reports (2004-2009)*, Pp. 114-115) ;

"(...) the rule of prior exhaustion of domestic remedies does not apply before the Court." (See Judgment ECW/CCJ/JUD/06/08 of 27th October 2008, *Dame Hadijatou Mani Koraou v. the Republic of Niger*, §§36-53, in particular §49, in *CCJ, ECOWAS Law Reports (2004-2009)*, pp. 234-238);

95. The Court emphasizes that it has reiterated this position in several subsequent judgments. See Judgment ECW/CCJ/JUD/10/12 of 11th June 2012, *Sikiru Alade v. Federal Republic of Nigeria*, §§ 29-32, in particular §31, in *CCJ, ECOWAS Law Report (2012)*, pp. 198-199; Judgment ECW/CCJ/JUD/01/14 of January 28, 2014, *Mr. Alimu Akeem v. Federal Republic of Nigeria*, §§35-39, in particular §39, in *CCJ, ECOWAS Law Report (2014)*, pp. 13-14; Judgment ECW/CCJ/JUD/02/18 of 13th February 2018, *Festus A. O. Ogwuche Esq. v. Federal Republic of Nigeria*, Pp. 35-37 ; Judgment ECW/CCJ/JUD/04/18 of 13th February 2018, *Federation of African Journalists, Fatou Camara, Fatou Jaw Manneh, Alhagie Jobe, Lamin Fatty v. The Republic of The Gambia*, Pp. 26-29 ; Judgment ECW/CCJ/JUD/15/18 of 24th May 2018, *Ms. Nazare Gomes de Pina v. Republic of Guinea-Bissau*, Pp. 7-8 ; Judgment



ECW/CCJ/JUD/20/18 of 29th June 2018, *Gabriel Inyang, Linus Iyeme v. The Federal Republic of Nigeria*, P. 13, §6.2.2 ; Judgment ECW/CCJ/JUD/12/19 of 28th February 2019, *Nancy Bohn-Doe v. Republic of Liberia*, p.16 ; Ruling ECW/CCJ/RUL/07/20 of 2nd December 2020, *Alex Nain Saab Moran v. Republic of Cape Verde*, §§75-84, notably §83 ; Judgment ECW/CCJ/JUD/23/21 of 25th June 2021, *Société Cissé Technologie v. State of Mali*, §§73-80, notably §80;

96. In accordance with its established case law, the Court can only reject the Respondent's argument that the Application should be declared inadmissible on the grounds that domestic remedies have not been exhausted;

97. The Court notes that with regard to the second objection to the admissibility of the Application, namely the lack of victim status, it goes without saying that proving victim status is an essential criterion for the admissibility of actions for human rights violations. Victim status is inseparable from the concept of personal and direct prejudice (grievance) suffered by the victim, as the Court has repeatedly emphasized, even if the Application may be lodged on behalf of, and for the account of a victim;

98. The Court recalls that the victim of human rights violations is the person who directly or indirectly suffers harm or pain (physical or mental injury), emotional suffering (through the loss of a close family member or relative), economic loss (loss of property) or any impairment that can be characterized as a violation of human rights. In addition to the loss, harm, or damage, the Applicant must prove that they have a direct and personal interest in the case;

99. The Court specifies that although a victim must have suffered directly from the act alleged against the Respondent and prove a direct or personal interest in the case, it has made exceptions in several decisions for individuals and organizations that

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have not suffered directly or personally, allowing them to bring actions as representatives on behalf of, and for the benefit of the direct victims;

100. The Court nevertheless states that a person may only bring an action on behalf of another person if the Applicant is a close relative of the direct victim of the human rights violations. See the judgment (Reverend Father Solomon MFA and 11 others v. Federal Republic of Nigeria and 5 others, Judgment ECW/CCJ/JUD/06/19 of 26th February 2019, §§35-37). See also Tahirou Djibo and 3 others v. Republic of Niger, Judgment No. ECW/CCJ/JUD/13/2020, p. 25).

See also The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria, Judgment ECW/CCJ/JUD/08/21 of 26th April 2021, §39;

"To clarify the concept of being a *victim*, the Court emphasized in the Case of Ebere Anthonia Amadi and 3 others v. Federal Republic of Nigeria, Judgment No. ECW/CCJ/JUD/22/19, p.15, that *in order to be a victim, there must be a sufficient direct link between the Applicant and the harm he or she claims to have suffered as a result of the alleged violation*. Or, as this Court mentioned in the case of Siny Dieng v. Republic of Senegal, Judgment No. ECW/CCJ/JUD/23/20, §148 and 149 « *the victim is the person who has suffered, directly or indirectly, harm or pain (physical or mental injury), emotional suffering, economic loss, or any other harm that can be characterized as a human rights violation* » (Madame Sessi Mélé v. State of Togo, Judgment ECW/CCJ/JUD/29/21 of 9th July 2021, §§75 and 76)

101. The Court notes that the condition of personal grievance is met in this case insofar as the Applicant is the person who suffered the incriminating act, namely being shot in the left thigh. Furthermore, she has suffered and continues to suffer harmful consequences.



In the present case, the allegations of human rights violations to which these facts give rise concern her personally and directly. The Court can only recognize her as a victim;

102. As regards the other admissibility criteria, there is no need for lengthy discussion since it has been established that the Application is not anonymous and has not been brought before another competent international court.

The Court concludes that the Application is admissible.

ON THE MERITS OF THE CASE

103. The Applicant alleges a violation of Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment, Article 7 of the International Covenant on Civil and Political Rights, Articles 4 and 5 of the African Charter on Human and Peoples' Rights, Article 5 of the Universal Declaration of Human Rights, and Articles 37 and 39 of the Convention on the Rights of the Child;

104. The Court will therefore examine the violations alleged by the Applicant, namely the violation of the right not to be subjected to torture and other cruel, inhuman, or degrading treatments or punishment (A), the right to physical integrity (B), and the violation of Article 39 of the Convention on the Rights of the Child (C).



A *Violation of the right not to be subjected to torture and other cruel, inhuman, or degrading treatments*

Arguments of the Applicant

105. The Applicant invokes Articles 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment, Article 7 of the International Covenant on Civil and Political Rights, Article 5 of the African Charter on Human and Peoples' Rights, Article 5 of the Universal Declaration of Human Rights, and Article 37 of the Convention on the Rights of the Child;

106. The Applicant considers that the Respondent's actions, as reported by her, constitute a flagrant and manifest violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment of 10th December 1984, insofar as the said actions are not such as to preserve her dignity and physical health. She asserts that by shooting her in the thigh when she was not involved in the events under investigation, the public officials subjected her to cruel, inhuman, and degrading treatments, the consequences of which she will suffer throughout her life;

107. The Applicant contends that the same actions by the Respondent also constitute a flagrant violation of Article 7 of the ICCPR, Article 5 of the ACHPR, Article 5 of the UDHR, and Article 37 of the CRC;

108. The Applicant contests the arguments put forward by the Respondent to conclude that her allegation of cruel and inhuman treatment has merits;



109. The Applicant recalls the mandatory nature of the prohibition of torture and cruel, inhuman, or degrading treatments or punishment under general international law and the obligation of the Respondent, as a Member State of the United Nations and a party to the ACHPR, to comply with it, as well as the duties and responsibilities incumbent upon its agents;

110. The applicant notes that torture and cruel, inhuman, or degrading treatment must be interpreted in accordance with international law and not Togolese law;

111. She asserts in this regard that the Court has repeatedly stated that in cases involving human rights violations, it applies only the rules of international law;

112. She argues that, in the *Pawimondom v. Republic of Togo judgment (ECW/CCJ/JUD/06/18)* the Applicant relied on Togolese domestic provisions, but the Court emphasized that *"as a judge of human rights violations, it applies international standards that are binding on States (...). It is for this reason, it must, in the present case, dismiss all arguments based on national provisions."*;

113. The Applicant concludes that the classification of the ill-treatments and attacks on her physical integrity cannot be assessed in the light of the provisions of the Togolese Criminal Code, but in the light of the international instruments ratified by the Respondent;

114. The Applicant recalls that, at the age of 17, she was shot by State agents without any provocation, negligence, recklessness or fault on her part, when she went out to buy provisions;

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115. She maintains that the medical certificate attests that she suffered numerous injuries as a result of this wound;

116. She reports that, in addition to the physical pain, these injuries cause her to feel afraid because she has since lost the normal use of her right foot, restricting her movement due to intense pain;

117. She disputes the Respondent's argument that, in order to avoid liability, the law enforcement officers fired warning shots into the air in self-defence because their lives were threatened by the angry crowd;

118. The Applicant asserts, on the contrary, that the shot that hit her in the thigh of her left leg was not fired into the air. She requests that the Court find that the supposed "warning shot" was fired with the intention of harming her, since it hit her directly in the thigh, approximately one (01) meter above the ground. She maintains that the Respondent clearly intended to harm her and that her life has changed as a result of the shots fired by State agents, which, based on an analysis of the facts she experienced, constitute cruel treatment;

119. The Applicant also refutes the Respondent's claim of self-defence. She notes that for this argument to be accepted, several criteria exist at the international level to verify whether the use of lethal force was justified to achieve the intended objective;

120. She states that the European Court of Human Rights has set out certain conditions for accepting self-defence. Thus, the use of force must be absolutely necessary to achieve the intended objective and must comply with the principle of proportionality;



121. With regard to the first criterion, namely the necessity of the use of force, the Applicant notes that in the present case, the objective pursued by firing warning shots, according to the Respondent, was to "clear a path through the ambush set for them by the crowd throwing projectiles at them." She points out that she was not part of the alleged "rabid crowd," but had gone out to buy food;

122. With regard to the second criterion, namely the proportionality of the act of defence to the threat, she asserts that in this case it was also not met because the Togolese State agents responded to "projectiles being thrown" by using firearms, namely warning shots. She concludes that this response was clearly disproportionate;

123. The Applicant therefore considers that the Respondent's argument that the warning shots were fired in self-defence is unfounded;

Arguments of the Respondent

124. The Respondent states that the Applicant's lengthy list of texts and conventions on torture and ill-treatment is irrelevant, as she has not provided any evidence to support her allegations, given that the officers did not deliberately target her during their operation. The Respondent maintains that the officers fired into the air and left the scene without knowing that the Applicant had been hit in the thigh by a stray bullet;

125. The Respondent states that law enforcement officers raided the premises after receiving information that adulterated fuel was being dumped in the neighborhood. It further reports that, once at the scene, the officers seized the vehicle transporting



the adulterated fuel. They were therefore engaged in a routine operation to seize illegal products from illegal sellers and did not strike or injure anyone, let alone inflict ill-treatment or torture;

126. The Respondent further maintains that it was when they were leaving the scene that the law enforcement officers were ambushed and surrounded by the crowd, led by the illegal sellers, who erected barricades to prevent them from leaving and threw projectiles at them;

127. The Respondent states that it was because of the scale of the attacks by the crowd and in order to extricate themselves from this ambush that the officers used their weapons, firing warning shots, which was the only way for them to escape the danger;

128. The Respondent adds that several officers were injured by stones and other projectiles, as well as by knives;

129. The Respondent further states that the two Jeep vehicles used by the law enforcement officers were seriously damaged, to the extent that one is now out of service. This demonstrates the extreme violent nature of the attack by the crowd against the officers, who were simply doing their job;

130. The Respondent asserts that despite the warning shots, and without the intervention of the backup team, the officers who initially arrived on the scene for the seizure operation would have been lynched by the angry crowd;

131. The Respondent concludes that the officers acted in self-defence and that the use of their weapons was necessary and proportionate;



132. With regard to the necessity of the warning shots, the Respondent argues that this was the only way for the officers to break through the ambush laid for them, as they had to call for backup, thanks to which they were able to escape the danger with injuries from knives and other projectiles and two destroyed intervention vehicles;

133. The Respondent therefore considers that, in this case, the law enforcement officers cannot be held responsible for what the Applicant suffered, since the shots fired were acts of self-defence;

134. With regard to torture, the Respondent points out that, under the terms of Article 198 of the Togolese Criminal Code, the term "torture" means:

"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, to punish her for an act she or a third person has committed or is suspected of having committed, to intimidate or coerce her or a third person, or for any other reason based on any form of discrimination whatsoever.

This term does not extend to pain or suffering arising only from, inherent in or incidental to lawful sanctions."

135. The Respondent emphasizes that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment uses the same definition of torture and cruel, inhuman or degrading treatments as the Togolese Criminal Code;

136. For the Respondent, it is clear from these provisions that torture is physical suffering inflicted on a person, in particular with the aim of obtaining a confession;

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137. In order to be classified as ill-treatment, the act in question must meet the criteria for moderate forms of physical violence or corporal punishment with the aim of extracting information;

138. The Respondent asserts that this is not the case here and that the Applicant is wrong to claim that she was subjected to cruel, inhuman, or degrading treatment by law enforcement officials and that the facts as alleged by the Applicant do not constitute ill-treatment or cruel, inhuman or degrading treatment deliberately committed by the officers;

139. Furthermore, the Respondent asserts that the Court has repeatedly emphasized the need to substantiate the allegations brought before it with evidence. See, for example, the following judgments:

Judgment of 7th October 2015, Messrs. Wiayao Gndakpa et al. v. State of Togo (ECW/CCJ/JUD/18/15) : §10 : "*Considering that, as a general rule, it is incumbent upon the Applicant to provide evidence in support of his claims, and that, in the application of this principle, the ECOWAS Court has consistently held (...) that all cases of human rights violations brought before it by an Applicant must be substantiated in a specific manner, by sufficiently convincing and unequivocal evidence.*" In its judgment of 17th February 2010, Garba Daouda v. the Republic of Benin, (ECW/CCJ/JUD/01/10), the Court reiterated the established principle of procedural law by stating that "*it is a general rule of law that during the trial, the party making allegations must provide evidence to support them (...).*";

140. The Respondent maintains that, in accordance with this case law and in view of the foregoing, the Court readily understands that the Applicant was not the victim of any act of torture or ill-treatments attributable to State agents. Consequently, all the



arguments based on the violation of the various Articles invoked are unfounded. The Respondent therefore requests that the Court dismiss all of the Applicant's unfounded allegations;

Analysis by the Court

141. The Court notes that the Articles whose violation is alleged by the Applicant provide respectively that:

Article 16.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment";

Article 7 of the International Covenant on Civil and Political Rights:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.";



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Article 5 of the African Charter on Human and Peoples' Rights:

"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.";

Article 5 of the Universal Declaration of Human Rights:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.";

Article 37 of the Convention on the Rights of the Child:

"States Parties shall ensure that:

- a) No child shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;"*

142. The Court notes that Article 5 of the UDHR, Article 7 of the ICCPR, and Article 5 of the ACHPR enshrine the prohibition of torture, cruel, inhuman, or degrading treatment or punishment, and other forms of ill-treatment such as subjecting a person without their free consent to medical or scientific experimentation, slavery, human trafficking, etc. Article 37(a) of the CRC extends this prohibition to children, i.e. persons under the age of eighteen (18);



143. Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment requires States parties to take measures to prohibit such acts. Thus, a State party that fails to take measures to enforce this prohibition or on whose territory such acts are committed may be held internationally responsible;

144. The Court notes that, in view of the facts of the case, it is important to determine whether the injuries inflicted on the Applicant in the circumstances described can be classified as torture or cruel, inhuman or degrading treatment;

145. The Court recalls that the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted for such purposes as obtaining from her or a third person information or a confession, punishing her for an act she or a third person has committed or is suspected of having committed, to intimidate or coerce the victim 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;

146. The European Court of Human Rights recognizes that the prohibition of torture has become a peremptory norm of international law (Soering, July 7, 1989, GACEDH). Similarly, a dynamic interpretation of Article 5 of the Universal Declaration of Human Rights, as well as Article 5 of the African Charter on Human and Peoples' Rights, naturally places on the State the obligation to take appropriate measures to prevent persons under its jurisdiction, in other words the population living on its territory, from being subjected to treatment contrary to the provisions of these articles;

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147. With regard to torture and inhuman, cruel, and degrading treatment, the prohibition is absolute. It applies even in difficult circumstances, including emergencies. It is firmly established that corporal punishment is prohibited under international law in general and the Convention against Torture in particular;

148. In order to identify cases of torture, the United Nations Committee Against Torture concluded, when examining several cases under Article 22 of the Convention Against Torture, that the following acts constitute acts of torture:

- The victim was handcuffed to a radiator and kicked and punched by police officers who insulted her because of her ethnic origin. She was also beaten with a heavy metal bar. Some time later, the police officers untied the victim from the radiator and handcuffed her to a bicycle. They then continued to beat her with their fists, police batons, and metal bars. The blows were so violent that the victim's ears bled. The victim was detained and beaten for 5 hours and 30 minutes.

- The victim was struck repeatedly with a baseball bat and a steel cable and was also punched and kicked all over her body. She lost consciousness several times. Apart from a few brief interruptions, this treatment lasted 13 hours, causing her numerous injuries to her buttocks and left shoulder. The victim spent the next 10 days in bed receiving medical treatment.

- The victim was ordered to undress, keeping only her underwear on, then handcuffed to a metal bar fixed to the wall and beaten with a baton for nearly an hour. For the next three days, she was given no food or drink and was not allowed to use the toilet;

149. The Committee also specified in its concluding observations that the following treatments constitute torture:

Keeping the person being interrogated tied up in very painful positions, covering their head with a hood, subjecting them to excessive noise levels for long periods of

time, depriving them of sleep for long periods of time, making threats, including death threats, shaking them violently, and exposing them to freezing temperatures;

150. Punching, beating with clubs or metal batons, mainly on the head, in the kidney area or on the soles of the feet, causing mutilation and even death in some cases;

151. The Court finds that, in this case, the shotgun blast that hit the Applicant in the left thigh caused her injury;

152. Indeed, the medical certificate she submitted to the file contains the following findings:

The victim has no particular medical or surgical history that could influence her current condition or treatment.

She was 17 years old at the time of the incident and was a student.

The victim presented the following injuries:

- A 1.5 cm long wound in the upper third of the anterior-external aspect of the left thigh, bleeding profusely.
- The popliteal and pedal pulses were clearly perceptible.
- Hemodynamic status was stable.

X-rays did not reveal any bullet fragments. There were no associated bone injuries.

Diagnosis: Shallow hemorrhagic wound in the upper third of the left thigh caused by a firearm, with no associated vascular or nerve complications.

Treatment received: Analgesics, anti-inflammatories, tetanus serum and vaccine, wound debridement and compression dressing, antibiotics, and guided healing.

Conclusion : This was an open gunshot wound with a shallow hemorrhagic wound to the upper third of the anterior-external aspect of the left thigh without major complications, requiring debridement and a compression dressing followed by guided wound healing.



The total incapacity period is estimated at 30 days;

153. The Court observes that the Respondent does not dispute that the events described took place on its territory. Nor does it dispute that, in the course of those events, the Applicant, who was 17 years old at the time, was shot in the left thigh, as attested by the medical certificate produced;

154. The Court notes, however, that in the present case, the acts complained of were not intended to obtain a confession from the Applicant, nor was the violence to which she was subjected intended to instill in her feelings of fear and humiliation likely to break her physical or moral resistance. Nor were these acts of violence intended to humiliate the Applicant and force her into submission;

155. The Court emphasizes that, while the acts complained of by the Applicant were committed by officers and other agents of the judicial police, as provided for in Article 1 of the « convention » which requires that the alleged acts of torture be *"inflicted by a public official or other person acting in an official capacity, or at his instigation or with his consent, express or tacit"*;

156. However, in view of all the foregoing, the Court considers that the suffering endured by the Applicant does not constitute acts of torture or cruel, inhuman, or degrading treatment within the meaning of Article 1 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatments or Punishment such as to engage the Respondent's responsibility on that ground;

157. The Court notes that in the present case, it is not disputed that it was in the context of the use of force against rioters that the Applicant was shot in the thigh, causing her injury. The law enforcement officers did not intend to injure any



particular demonstrator. The security officers had to use force to escape from the rioters, whose level of violence and aggression was evident;

158. The Court therefore considers that the use of firearms to escape from rioters, as indicated by the Respondent, was not part of specific treatment reserved for the Applicant by law enforcement officers, as required by Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment;

159. On the strength of the foregoing, the Court concludes that the use of force by the security forces, who fired their firearms at demonstrators armed with projectiles, cannot be classified as an act of torture or cruel, inhuman or degrading treatments within the meaning of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment;

160. The Court therefore finds that the Respondent did not violate the provisions of Article 5 of the UDHR, Article 7 of the ICCPR, Article 5 of the ACHPR, Article 16(1) of the Convention against Torture, and Article 37(a) of the Convention on the Rights of the Child (CRC).

B *On the violation of the right to physical integrity*

Arguments of the Applicant

161. The Applicant maintains that the actions of the Respondent's agents constitute a flagrant violation of the protection of her physical integrity and that the injury inflicted on her by the agents constitutes a serious violation of Article 4 of the African Charter on Human and Peoples' Rights.

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Arguments of the Respondent

162. In its counter – argument on the violation of the right to respect for physical integrity, the Respondent State held the same argument it put forward to refute the allegation of torture and cruel, inhuman, or degrading treatments;

Analysis by the Court

163. The Court notes that under Article 4 of the African Charter on Human and Peoples' Rights, "*The human person shall be inviolable. Every human being shall have the right to have his life and physical and moral integrity respected. No one shall be arbitrarily deprived of this right.*";

164. The Court recalls that a violation of the right to physical integrity consists of an attack on a person's physical integrity, i.e., injuries of varying severity inflicted on another person without taking their life.

165. The Court notes that in the present case, it is clear from the documents in the case file, in particular the photographs and the medical certificate, that the bullet received by the Applicant struck her left thigh, causing her injury.

The doctor who examined the Applicant issued her with a medical certificate worded as follows:

I, the undersigned, Dr. GOUNDO Djaré Yendoukoa, surgeon at the Bè Hospital, certify that I examined the aforementioned AYIVIGAN Dédé, aged 19, not in school, unemployed, and residing in the Bassadji neighborhood, who was the victim of an open wound to the left thigh caused by a firearm on 27th August 2019.



History: Ms. AYIVIGAN Dédé was walking down the street in the Bassadji neighborhood when she was hit by a gunshot from an unknown source. This resulted in a wound to her left thigh, and the victim was immediately taken to Bè Hospital for treatment.

The victim has no particular medical or surgical history that could influence her current condition or treatment.

She was 17 years old at the time of the incident and was a student. The victim presented with the following injuries:

- A 1.5 cm long wound in the upper third of the anterior-external aspect of the left thigh, bleeding profusely.
- The popliteal and pedal pulses were clearly perceptible.
- Hemodynamic status was stable.

X-rays did not reveal any bullet fragments.

There were no associated bone injuries.

Diagnosis: Shallow hemorrhagic wound in the upper third of the left thigh caused by a firearm, with no associated vascular or nerve complications.

Treatment received: Analgesics, anti-inflammatories, tetanus serum and vaccine, wound debridement and compression dressing, antibiotics, and guided healing.

Conclusion: This was an open gunshot wound with a shallow hemorrhagic wound to the upper third of the anterior-external aspect of the left thigh without major complications, requiring debridement and a compression dressing followed by guided wound healing.

The temporary incapacity to work (ITT) is estimated at 30 days.

This injury left her unable to move for approximately three (03) months;

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166. The Court concludes that the Applicant suffered physical harm as a result of the gunshot wound to her left thigh, which caused bodily injury from which she continues to suffer to this day;

167. The Court therefore finds that the Respondent violated the Applicant's right to physical integrity, thereby violating the provisions of Article 4 of the ACHPR.

C *Violation of Article 39 of the Convention on the Rights of the Child*

Arguments of the Applicant

168. The Applicant states that the bullet she received during the events required enormous expenditure for her care.

169. She notes that approximately three (03) months after her discharge from hospital, armed with her hospital bills, she went to the Central Criminal Investigation and Research Service (SCRIC) with her mother to make a statement;

170. She adds that on 29th July 2021, she submitted a claim for compensation to the Minister of Security and Civil Protection, without success;

171. The Applicant states that this incident left her completely unable to move for approximately five (05) months and that she still suffers from the serious injuries she sustained as a result of the actions of the security forces, as attested to by the report of Mr. Kossivi AMEGAH-ATSYON, a Bailiff in Lomé;

172. She therefore asserts that the Respondent did not take all appropriate measures to facilitate her physical and psychological rehabilitation and social reintegration,

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even though she was only 17 years old at the time she was subjected to cruel, inhuman, and degrading treatments by State agents;

Arguments of the Respondent

173. The Respondent asserts that, unable to provide evidence of the acts of torture and ill-treatment she alleges, the Applicant invokes the rights of the child and asserts that, through their actions, the State agents violated article 39 of the Convention on the Rights of the Child;

174. She states that she has lodged an informal appeal with the Minister of Security and Civil Protection seeking compensation for the harm caused by State agents since 2021, but that to date she has received no compensation from the Respondent;

175. The Respondent considers that the Applicant is clearly wrong in making such allegations;

176. The Respondent recalls that Article 39 of the CRC provides that States have an obligation to ensure the physical and psychological recovery and social reintegration of any child who has been the victim of abuse;

177. The Respondent maintains that it has not failed to fulfill its obligations under the above provisions because, in the present case, it is undisputed that the Applicant was not a victim of torture or ill-treatment and that it is also undisputed that the warning shots were fired by the officers solely for the purpose of clearing a path through the ambush that had been laid for them;

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178. The Respondent also notes that the Applicant claims to have filed a claim for compensation on 29th July 2021, which has not been followed up by the Minister of Security and Civil Protection. It considers that, in these circumstances, if the Applicant was certain of her right to compensation, she would have exhausted domestic remedies. Having failed to do so, she is wrong to bring the matter before the ECOWAS Court of Justice, which does not have jurisdiction to hear her unfounded Application;

179. In view of all the foregoing, the Respondent concludes that the argument based on the violation of the various Articles invoked by the Applicant is unfounded and unsubstantiated and requests that the Court dismiss it outright;

180. The Respondent maintains that it has not failed to fulfill its obligations under the provisions of the aforementioned Article 39. He observes that the applicant's allegations that several complaints have been lodged with the domestic courts over the years and have been left unanswered are merely pretexts which, moreover, rightly demonstrate the lightness with which the applicant herself treats her claim for compensation;

181. The Respondent adds that the State is represented by the Minister of Justice, in accordance with Article 60 (1) of the Code of Civil Procedure, which provides that: *"notifications shall be addressed to the State at the office of the Minister of Justice"* and that the Applicant deliberately chose to address his claim for compensation to the wrong recipient in order to take advantage of his own turpitude before the Court. The Respondent considers that, having acted in self-defence, it is not responsible for the violations of the Applicant's rights and therefore requests that the Court dismiss all her arguments as unfounded;

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Analysis by the Court

182. The Court recalls that Article 39 of the Convention on the Rights of the Child, the violation of which is alleged by the Applicant, provides that: "*States Parties shall take all appropriate measures to facilitate the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflict. Such rehabilitation and reintegration shall take place in conditions which promote the health, self-respect and dignity of the child.*";

183. In the present case, the circumstances in which the victim was injured and the shooting that caused her injuries cannot be characterized as cruel, inhuman, or degrading treatments;

184. The Court concludes that the Respondent, by failing to take measures to facilitate the physical and psychological rehabilitation of the minor Applicant at the time of the events and by ignoring her claim for compensation, did not violate the provisions of Article 39 of the Convention on the Rights of the Child (CRC);

ON THE CLAIM FOR COMPENSATION FOR THE ALLEGED DAMAGES

Arguments of the applicant

185. The Applicant requests from the Court:

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AN ORDER on the Respondent to investigate and punish the law enforcement and security officers who subjected her to cruel, inhuman, and degrading treatments in violation of the above-mentioned provisions;

AN ORDER on the Respondent to provide compensation for the prejudice suffered, taking into account the relevant provisions of the Convention against Torture, in particular Article 14, as well as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law adopted by the United Nations General Assembly on 16th December 2005, in its Resolution 60/147, in particular in the forms of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;

AN ORDER on the defendant to pay the Applicant the sum of one hundred million (100,000,000) CFA francs in damages, in accordance with the provisions of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment of 10th December 1984, and Articles 5, and 9 of the International Covenant on Civil and Political Rights of 16th December 1966;

AN ORDER on the Respondent to bear all costs;

Arguments of the Respondent

186. The Respondent requests the Court to dismiss all claims, pleas and submissions contained in the Application of 18th November 2024 as unfounded due to the total



lack of evidence of the alleged violations and treatment, and to order the Applicant to bear all costs;

Analysis by the Court

187. The Court recalls that its jurisdiction in matters of human rights violations allows it not only to find such violations but also to order redress where appropriate;

188. Nevertheless, the Court specifies that damages are awarded to the victim of harm only to compensate for the harm that the victim has actually suffered as a result of the fault of the perpetrator of the harmful act. It follows that the victim must prove his or her status as a victim and prove the prejudice for which he or she is seeking compensation (Judgment ECW/CCJ/JUD/10/25 of 14th March 2025, *Ibrahima Cherif Bah, Abdoulaye Bah, Mamadou Cellou Balde, Ousmane Gaoual Diallo, Etienne Soropogui c. Guinée*, §196);

189. The Court also recalls that it has accepted that the Respondent, through its agents, violated the Applicant's right to physical integrity;

190. The Court has consistently held that *"The measures it orders (...) when it finds a violation of human rights are primarily aimed at cessation of such violations and reparation. To this end, it takes into account the circumstances of each case in order to indicate the appropriate measures..."* (Judgment ECW/CCJ/JUD/13/12 of 31st October 2012, *Badini Salfo v. Burkina Faso*, in CCJ, ECOWAS Law Reports (2012), p.298, §59).

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Furthermore, the Court considers moral damage to be established once it finds that a human right has been violated;

191. The measures it orders in respect of reparation also take into account the requests made by the victim;

192. In the present case, the Court finds that the Applicant had not been subjected to cruel, inhuman, and degrading treatments and that, furthermore, her respect for the right to physical and psychological rehabilitation under Article 39 of the Convention on the Rights of the Child had not been violated (CRC);

193. However, since the Court has concluded that the Respondent violated the Applicant's right to physical integrity, her claim for damages must be declared partially well founded;

194. Nevertheless, the Court considers that the sum of one hundred million CFA francs claimed by the Applicant as damages is excessive;

After an assessment taking into account objective factors, in particular the photographs and the medical certificate included in the file, the Court considers that it should be reduced to a fair amount by setting the compensation at ten (10,000,000) million CFA francs.

COSTS

195. Under Article 66, paragraph 2, of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if the other party so requests. The Court notes that



in this case the Applicant has made such a request. Consequently, the Court rules that the Respondent, having been partially unsuccessful, shall bear the costs.

FOR THESE REASONS

The Court

Sitting in public hearing and having heard the Applicant

On jurisdiction

Declares that it has jurisdiction to hear the dispute

On admissibility

Declares the Application admissible

On the merits

Finds that the Applicant was not subjected to cruel, inhuman, and degrading treatments;

Further finds that the Applicant's right to physical and psychological rehabilitation has not been violated either;

Finds, however, that the Respondent violated the Applicant's right to physical integrity;

Declares, therefore, that the Applicant's claim for damages is partially justified;

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Orders the Respondent to pay the Applicant the sum of ten million (10,000,000) CFA francs in damages to compensate for the harm suffered.

COSTS

Orders the Respondent to bear all costs.

Thus done and adjudged on the day, month, and year above.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES

Hon. Judge Dupe ATOKI

Presiding

Hon. Judge Gberi-bè OUATTARA

Judge-Rapporteur/Member

Hon. Judge Edward Amoako ASANTE

Member

ASSISTED BY: Gaye SOW ₣

Deputy Chief Registrar

