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

In the Matter of

OYEKUNLE JIDE

V.

FEDERAL REPUBLIC OF NIGERIA

Application No. ECW/CCJ/APP/29/25 –

Judgment No. ECW/CCJ/JUD/28/26

JUDGMENT

ABUJA

On 22nd June 2026

APPLICATION No. ECW/CCJ/APP/29/25

JUDGMENT No. ECW/CCJ/JUD/28/26

BETWEEN

OYEKUNLE JIDE **APPLICANT**

AND

FEDERAL REPUBLIC OF NIGERIA **RESPONDENT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES - Presiding/Judge Rapporteur

Hon. Justice Sengu Mohamed KOROMA - Member

Hon. Justice Edward Amoako ASANTE - Member

ASSISTED BY

Dr. Yaouza OURO-SAMA - Chief Registar

REPRESENTATION OF PARTIES:

Collins I. Maidoh-Anene, Esq.- Counsel for the Applicant

Maimuna Lami Shiru (Mrs.) - Counsel for the Respondent

I. JUDGMENT

1. This is the judgment of the Court read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. IDENTIFICATION OF PARTIES

2. The Applicant is Mr. Oyekunle Jide, Nigerian citizen, journalist by profession, President of the Nigeria Union of Journalists (NUJ), FCT Correspondent Section and resident in Abuja.
3. The Respondent is the Federal Republic of Nigeria, a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights, hereinafter referred to as the African Charter.

III. INTRODUCTION

4. In the instant case, the Applicant came to claim the violation of his human rights, alleging that on August 1, 2024, while covering a peaceful protest, police fired tear gas at the protesters. While trying to take refuge in a safe place, the Applicant was attacked and assaulted by police officers, who also seized his mobile phone, and claimed that he was not authorized to perform the live recording of the event. The Applicant also stated that his camera was damaged and that he was detained for approximately eight hours on charges of invasion of property and participation in an illegal assembly. He was later released

as a result of the intervention of FCT Police Command spokesperson Josephine Adeh.

IV. PROCEEDINGS BEFORE THE COURT

5. The originating application (doc.1), accompanied by nine (9) Exhibits, was registered at the Registry of this Court on June 13th, 2025.
6. The Respondent State, the Federal Republic of Nigeria, which was duly served on the above date, submitted a Statement of Facts in opposition to the Applicant's Application (doc. 2) and its defence (doc. 3) On July 14, 2025, which were served on the Applicant on July 25, 2025.
7. On August 12th, 2025, the Applicant presented his reply, which was duly served on the Respondent State, and the later said nothing.
8. The 18th of May 2026 was appointed as the date for the hearing of the parties, at which the representatives of the parties were heard and presented their oral submissions.
9. The case was adjourned for judgment on the 22nd of June 2026.

V. THE APPLICANT'S CASE

a. Summary of Facts

10. The Applicant's work as a journalist involves covering events of public interest, including protests, information on sensitive issues affecting the public, and reporting corruption by public officials.
11. On August 1, 2024, at around 11.55 a.m., the Applicant had the opportunity to perform his journalistic duties as a journalist covering a peaceful protest entitled *"#EndBadGovernanceInNigeria"* organised by Nigerians led by a group of civil society organisations including: Creative Change Centre, Revolutionary Socialist

Movement, Movement for Socialist Alternative and Committee for the Defence of Human Rights at Eagle Square in Abuja, Nigeria.

12. The protest aimed to defend good governance, social justice, government responsibility, end hunger, economic difficulties, insecurity and corruption.

13. However, during the coverage, the police, the Respondent's agent, fired tear gas at the peaceful protesters, who fled to a safe place. Evidence of this fact is invoked and attached as "Exhibit Jide 1" and Exhibit Video 1 and will be invoked during the judgment.

14. While the Applicant fled to a safe place, afraid of being injured, he was attacked by police men, including the Federal Capital Territory Police Commissioner (FCT), Mr. Benneth Igweh, a high-ranking agent of the Respondent, who physically assaulted him, dragging the Applicant as a common criminal and later handed him over to some subordinate officers. Evidence of this fact is invoked and attached as "Exhibit Jide 2" and "Exhibit Video 1" and will be invoked during the judgment.

15. The agents of the Respondent seized the Applicant's mobile phone in the process, stating that he was making a live recording of the event, which he was not authorized to do.

16. The police commissioner took the Applicant's Samsung Galaxy A31 mobile phone for around eight hours in order to install listening devices on the phone and extract information that would enable them to monitor the Applicant's calls and movements.

17. In the course of brutalization and harassment, the Applicant's Canon EOS 70D Mark 111 camera was seriously damaged, without repair, during his encounter with the armed police officers who bruised him as a common criminal. The evidence of this fact is invoked and

attached here as "Exhibit Jide 3" and will be invoked during the judgement.

18. The Applicant was arrested, for invasion of property and illegal assembly, for covering a peaceful protest in a public place, and was detained for about 8 hours.

19. The Applicant was later released following the intervention of FCT police command spokesperson Josephine Adeh.

20. Since the Applicant's mobile phone was confiscated by the police, his calls and movements have been illegally monitored and tracked, which has become a source of concern for the Applicant and his family.

21. The Applicant has received strange calls from unknown numbers and, whenever he tried to answer the calls, the person who made them drop the call, but managed to take a screenshot of two of those suspicious calls. Evidence of this fact is invoked and gathered as "Exhibit Jide 4" and will be invoked during the judgment.

22. The Applicant is concerned, distressed and disturbed by the continuous attack and repression of press freedom, freedom of expression and dissenting voices due to the intolerant attitude of the Respondent, fearing that he is being monitored, tracked and targeted by the Respondent. Evidence of this fact is invoked and gathered as "Exhibit Jide 6" and will be invoked during the judgment.

23. Given the seriousness of these threats, it is extremely difficult for the Applicant and his family to move or make calls freely without fear, because their right to privacy has been compromised, causing them to live under perpetual fear.

24. The atmosphere of fear also has had a serious emotional and psychological impact on the Applicant's family and on the Applicant

himself, due to a justified fear that he might be attacked at any moment by Nigerian state agents.

25. The Applicant's wife and two children have not had the best of their lives as a result of their vulnerability to the danger of being assaulted and attacked by State agents.

26. There has been a series of arbitrary arrests, attacks and detentions of journalists by the police, the military and the Department of State Security (DSS) since the current Federal Government of the Respondent came to power.

27. The fight against freedom of expression, freedom of the press and peaceful protests in Nigeria has become a major concern, thus putting his life, his freedom, his dignity, his privacy and that of his family under serious threat.

b. Pleas in Law

28. The Applicant relied on Articles:

i. 66 of the ECOWAS Revised Treaty;

ii. 5, 6, 9 and 14 of the African Charter.

iii. 1, 3, 5, 9, 12, and 17 of the Universal Declaration of Human Rights (UDHR);

iv. 7, 9, 10, 17, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR);

v. 1, 2, 9 and 15 of Resolution 32/13 of the Human Rights Council of the United Nations General Assembly (UNGA/HRC/RES/32/13)

c. Reliefs Sought

29. The Applicant concluded by seeking from the Court:

i. A Declaration that the Respondent's act of arresting, detaining, threatening, and brutalising the Applicant for trespassing on private property—with the intent to suppress the Applicant's right to freedom of expression and to disseminate information, including on the Internet—constitutes a violation of the Applicant's digital rights, as protected by Article 9 of the African Charter.

ii. A Declaration that the Respondent's act of arbitrarily arresting and detaining the Applicant by the agents of the Respondent because of a contractual dispute constitutes a violation of the fundamental human right of the Applicant to freedom, protected by Article 6 of the African Charter.

iii. A Declaration that the physical and psychological torture, brutal treatment and other inhuman treatment of the Applicant, including the destruction of his video camera by the Respondent, constitute a violation of the Applicant's right to respect for the dignity inherent in a human being and a violation of his right against torture and inhuman treatment guaranteed by Article 5 of the African Charter.

iv. A Declaration that the Applicant's mobile phone seizure and the destruction of his CANON EOS 7D camcorder by the Respondent, without a legal order from a court, constitutes a violation of the Applicant's fundamental right to own property, as protected by Article 14 of the African Charter.

v. A Declaration that the Respondent's actions—namely, seeking to delete content, installing a listening device on the Applicant's telephone, and monitoring the Applicant, including his family and his home—constitute a violation of the Applicant's right to privacy, as guaranteed by Article 17 of the African Charter.

vi. An order preventing the Respondent and its agents from continuing to monitor the applicant by any means and preventing them from continuing to intimidate, harass or threaten the Applicant by any means or forms.

vii. An order from this Court that grants a general compensation to the Applicant in the amount of N500,000,000.00 (five hundred million Naira) only for physical and psychological pain, suffering, emotional trauma and physical damage caused to the Applicant by the Respondent's agents.

viii. An order by the Court granting special compensation for the replacement of the camera by the Applicant in the amount of N5,000,000.00 (five million Naira) only.

ix. And any other measures which the Court deems appropriate to take under the circumstances of the case.

VI. THE RESPONDENT'S CASE

a. Summary of Facts

30. Unless expressly acknowledged, the Respondent denies each and every one of the factual allegations contained in the originating application, as if they were all set out here and refuted seriatim.

31. The Respondent denies paragraphs 2.3 and 2.4 of the Applicant's statement of facts and asserts that the protest that took place on August 1, 2024, was a violent protest, especially in the cities of Kano, Gombe and Abuja. The newspaper showing the violent protests in these states is attached and identified as Exhibit FMOJ "A", to be used by the Respondent as evidence.

32. Protesters at Eagle Square in Abuja attempted to attack the Three Arms Zone, the area where the Respondent's government headquarters is

located, composed of the National Assembly, Supreme Court and ASO Villa. However, Nigerian police force agents dispersed violent protesters with tear gas to prevent access to the area.

33. The Respondent denies paragraphs 2.5 and 2.6 of the Applicant's statement of facts and, in opposition, asserts that Nigerian police officers acted against violent protesters to prevent the attack on the Three Arms Zone using tear gas.

34. The protesters who attended the warnings of the agents were released without any violence, but those who insisted on threatening to attack the Three Arms Zone and police officers were legally detained for violation of law and order.

35. Police officers did not attack or drag the Applicant or any other protester "as ordinary criminals", as alleged.

36. The Respondent denies paragraphs 2.7 and 2.8 of the Applicant's statement of facts and states that Nigerian police officers did not seize the mobile phones of other protesters that day, nor did they extract information from any mobile phone to monitor calls or movements of protesters, as alleged.

37. The Respondent denies paragraphs 2.9 and 2.10 and declares that he has not bruised or harassed the Applicant, nor has it caused damage to the Applicant's Canon EOS 70D Mark III camera, as alleged.

38. Police officers did not act aggressively against any protester and did not violate anyone's rights during the protest called "End Bad Governance".

39. The Respondent denies paragraphs 2.11 and 2.12 and states that the Applicant was a violent protester, who refused to obey the orders of the police (who tried to restrict the access of the protesters to the Three Arms Zone).

40. For this reason, the Applicant was legally detained, but released immediately after identifying himself, without his rights being violated.

41. The Respondent denies paragraphs 2.13 and 2.14 of the statement of facts and puts the burden of proof on the Applicant for the allegations therein.

42. The Respondent denies paragraphs 2.15 and 2.16 and declares that the fact that the Applicant claims that he received strange calls from unknown numbers cannot be attributed to the officers of the Nigerian police force or to any agents of the Respondent.

43. The Respondent denies paragraphs 2.17 and 2.18 and declares that police officers never threatened anyone, nor interfered with the right to privacy of anyone, including the Applicant.

44. The duty of the Nigerian police force is to investigate, arrest when necessary and prosecute before the courts, and not cause fear to any citizen, as claimed by the Applicant.

45. The Respondent denies paragraphs 2.19, 2.20 and 2.21 and declares the following:

(a) No officer of the Nigerian police force or the Respondent has injured or attacked any person in the exercise of their legal duties.

(b) No agent of the Respondent has carried out indiscriminate arrests or attacks, as alleged by the Applicant, against journalists or any other professional category. All investigations, arrests and proceedings carried out by the Nigerian police force have been conducted in accordance with national and international laws.

46. The Respondent asserts that the Applicant's claims for damages are not supported by facts that could form the basis for any assessment of damages in the Applicant's favour against the Respondent.

47. The Respondent further maintains that the damage assessment must be based on evidence submitted to this Court, which the Applicant has not done.

b. Pleas in Law

48. The Respondent did not rely on any legal instrument.

c. Reliefs Sought

49. The Respondent prays the Court to:

i. Dismiss the Applicant's application as unfounded and lacking legal grounds.

VII. ON THE JURISDICTION

50. In the instant case, the Applicant bases his allegations on the alleged violation of his human rights, in violation of the relevant provisions of the African Charter on Human and Peoples' Rights and other international instruments for the protection of human rights that he invokes, namely the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

51. Accordingly, the instant case falls within the scope of the jurisdiction conferred on this Court under Article 9(4) of Supplementary Act A/SA.1/12/25 on the ECOWAS Court of Justice to hear cases of human rights violations occurring in any Member State (See the cases *SERAP v. FEDERAL REPUBLIC OF NIGERIA AND 4 OTHERS*, ECW/CCJ/JUD/16/14, *(§72) and KARIM MEISSA WADE v. RÉPUBLIQUE DU SENEGAL, ECW/CCJ/JUD/19/13,§72*).

52. Consequently, the Court considers that it has competence to rule on the instant case.

VIII. ADMISSIBILITY

53. The admissibility of the application initiating proceedings is governed by the provisions of Article 10 (4) of the Supplementary Act A/SA.1/12/25 on the Court as cited above, which establishes that:

"Access to the Court is open to: (...) 4) An Individual 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 matter has been instituted before another Competent International Court for adjudication (...)"

54. Given that the Applicant has identified himself as victims of human rights violation, the Court finds that the application is neither manifestly unfounded under the above-mentioned article nor inadmissible for any other ground.

55. The action must therefore be declared admissible.

IX. MERITS

56. The Court will now examine each of the human rights allegedly violated by the Respondent State, taking into account the issues raised by the Applicant in the Court's decision.

a) The alleged violation of the right to freedom of expression

The Applicant's Pleas in Law

57. The Applicant claimed, in summary, that on 1 August 2024, whilst covering a peaceful protest, the police fired tear gas at the protesters; whilst attempting to take refuge in a safe place, the Applicant was attacked and assaulted by police officers, who also seized his mobile phone, claiming that he was not authorised to livestream the event. The Applicant also stated that his camera had been damaged and that he had been detained for approximately eight hours on charges of trespass and taking part in an unlawful assembly. He was later released as a result of the intervention of FCT Police Command spokesperson Josephine Adeh.

Respondent's Arguments

58. The Respondent refuted the above facts stating, in short, that the protest was violent, that the protesters in Eagle Square Abuja tried to attack the Three Arms Zone, where the Respondent's government headquarters is located, which includes the National Assembly, the Supreme Court and the ASO Villa, and Nigerian police officers faced violent protesters with tear gas to prevent them from accessing it; that the members of the Nigerian police force did not attack or drag the Applicant or any other protester as a common criminal, as alleged.

Analysis of the Court

59. Freedom of expression is guaranteed by Article 19 of the DUDH which provides:

"*1. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions with- out interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* "

60. Article 19 of the ICCPR also establishes that:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

61. In turn, the Article 1 of the ACHPR, provides that:

"The Member States of the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them."

62. And the Article 9 provides the following:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

63. The above articles reflect the fact that freedom of expression is a fundamental human right, essential for the personal development of the individual, for his political conscience and for his participation in the conduct of public affairs in his country. (See *AFRICAN*

COMMISSION ON HUMAN AND PEOPLES' RIGHTS MEDIA RIGHTS AGENDA, CONSTITUTIONAL RIGHTS PROJECT, MEDIA RIGHTS AGENDA AND CONSTITUTIONAL RIGHTS PROJECT v. NIGERIA, Communication No. 105/93, 128/94, 130/94, 152/96, para. 54)

64. As this Court has stressed in the case *FEDERATION OF AFRICAN JOURNALISTS & ORS v. REPUBLIC OF GAMBIA,* ECW/CCJ/JUD/04/18, that: "*Freedom of expression is a fundamental human right and its full enjoyment is essential for the realization of individual freedoms and the development of democracy. It is not only a central pillar of democracy, but it is also indispensable for the flourishing of a dynamic and participative civil* society." (In the same sense, *Se ASSOCIATION DES BLOGUEURS DE GUINÉE (ABLOGUI) & ORS v. THE STATE OF GUINEA, ECW/CCJ/JUD/38/23*, para. 51; The African Court in the Case, *INABIRE VICTOIRE UMUHOZA v. REPUBLIC OF RWANDA,* Application No. 0003/2014, of 24 November 2017, para. 132 and 133).

65. The Committee on Human Rights, in its Commentary No. 34 on Article 19, on Freedom of Opinion and Expression, noted that Article 19(2) requires that *"States Parties should guarantee the right to freedom of expression, including the right to seek, receive and disseminate information and ideas of all nature, without regard to borders. This right covers the expression and reception of communications in any form relating to ideas and opinions likely to be transmitted to third parties..."* (para. 11); and paragraph 2 states that *"protects all forms of expression, as well as the means through which they are spread."*

66. This right is essential to protect the freedom of the press. The different regional systems for the protection of human rights and the universal system agree on the essential role played by freedom of expression in the consolidation and dynamics of a democratic society and an invaluable instrument for the defence and protection of human rights. (See East African Court of Justice, *BURUNDI JOURNALISTS' UNION v. PROSECUTOR GENERAL OF THE REPUBLIC OF BURUNDI*, Reference No. 7 of 2013 (May 15, 2015), par. 82; European Court of Human Rights (ECHR), *LINGENS v. AUSTRIA*, Application no. 9815/82 (July 8, 1986), par. 41 and 42; Inter-American Court of Human Rights, *HERRERA-ULLOA v. COSTA RICA*, Series C, No. 107 (July 2, 2004), par. 117)

67. It should be noted that access to the Internet is necessary for the achievement of freedom of expression, the right to access information and the exercise of many other related human rights, because in the light of its accessibility and its ability to store and communicate large amounts of information, the Internet plays an important role in improving public access to news and facilitating the dissemination of information in general. (See African Commission on Human and Peoples' Rights, Declaration of Principles of Freedom of Expression and Access to Information in Africa, 65th Ordinary Session (21 October to 10 November 2019), Principle 37; TEHD, *YILDIRIM v. TURKEY*, Application N0. 3111/10 (December 18, 2012, and *CASE OF TIMES PUBLICATIONS LTD (No. 1 and 2) v. UNITED KINGDOM*, App. nos. 3002/03 and 23676/03) de 10 March 2009, para. 27)

68. This Court followed the same understanding above. (See the *CASES ASSOCIATION DES BLOGUEURS DE GUINÉE (ABLOGUI) & ORS v. THE STATE OF GUINEA*, para. 60, *AMNESTY INTERNATIONAL*

TOGO & ORS v. REPUBLIC OF TOGO, ECW/CCJ/JUD/09/20, para. 38)

69. In the same judgment, the Court stressed that access to the Internet is a right within the right to freedom of expression. (para. 39) The above jurisprudence follows the provisions of UN Human Rights Council Resolution 26/13 on the promotion, protection and enjoyment of human rights on the Internet , where he stated that "*...same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*".

70. The Court recalls, however, that the right to freedom of expression is not absolute and that its enjoyment may be subject to limitations, and it is up to the Member State to define the conditions for the exercise of the right to freedom of expression. (See *THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVES v. THE FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/16*/20, para. 115)

71. In this sense of the combined analysis of Articles 19 (3) of the ICCPR, 9 and 27 (2) 2 of the African Charter, it should be noted that a limitation or restriction of the right to freedom of expression will only be justifiable when (i) provided for in the law, (ii) has a legitimate objective, and (iii) is necessary and proportionate in a democratic society.

72. In this context, the Court reiterates that the right to freedom of expression is of paramount importance in any democratic society, and that any restrictions on its exercise must take account of rigorous tests of justification, therefore, any restriction or limitation must satisfy this

cumulative tripartite test to be considered a legitimate restriction of the right to freedom of expression. (See the aforementioned case *ASSOCIATION des BLOGUEURS DE GUINÉE (ABLOGUI) And other C. THE STATE OF GUINEA*, para. 53; Human Rights Committee, *KORNEENKO ET AL. C. BELARUS*, Communication No. 1553/2007, para. 8.3)

73. In this sense, the General Comment stated that the exercise of the right to freedom of expression entails special duties and responsibilities and therefore, "*only two categories of restrictions to this right are admitted: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*." (para. 21)

74. It also stressed that article 19 (3) lays down the specific conditions under which restrictions should be imposed. That is: "*Restrictions shall be "provided for in the law"; they may only be imposed on the basis of one of the grounds laid down in subparagraphs (a) and (b) of paragraph 3 and shall comply with the strict criteria of necessity and proportionality*" (para. 22)

75. It highlighted, however, that when the State Party imposes certain restrictions on the exercise of freedom of expression, those restrictions should not jeopardize the right itself. (para. 21) (See also the African Commission, the Declaration of Principles of Freedom of Expression and Access to Information in Africa, Principle 9; *ILLIA MALAM MAMANE SAIDAT v. REPUBLIC OF NIGER*, ECW/CCJ/JUD/17/2021, para. 70)

76. The Court shall then verify that the restrictions on the exercise of freedom of expression imposed by the Respondent in the above case have complied with the above requirements.

a) *The limitation must be provided for in the law*

77. The first criterion determines that limitations on freedom of expression and information should be provided for by law that is consistent with international human rights standards. Limitations must comply with the principle of legality, by which they are defined by law in clear, unambiguous and not excessively broad terms, so that the scope and terms of their application and consequences are predictable. (See African Commission on Human and Peoples' Rights, *MALAWI AFRICAN ASSOCIATION AND ORS v. MAURITANIA,* Communication No. 54/91-61/91-98/93-164/97-196/97-210/98, para. 102)

78. Where a decision is taken to impose any form of restriction on freedom of expression, the responsible authorities shall disclose the specific legal provisions for which they are competent and authorised to impose such restrictions. (Human Rights Committee, *KORNEENKO ET AL. v. BELARUS*, Communication No. T1553/2007.

79. To support the above facts, the Applicants gathered the following documents to the case file:

i. Copies of photographs showing police officers holding the Applicant against his will during the above demonstration. (See Exhibits 2.5, 2.6, 2A and 2B) gathered to the originating application)

ii. Extracts from online newspapers containing, inter alia, that:

a) "*Nigeria: Reporters Without Borders (RSF) sounded the alarm after journalists were attacked and detained while covering protests (...) Thirteen journalists have been arrested and at least 16 others attacked while covering major protests against the cost-of-living crisis in Nigeria. Reporters Without Borders (RSF) condemns these targeted attacks and calls on the authorities to urgently protect*

journalists covering the protests, and to identify and prosecute those responsible for the violence.

Among the reported cases, is highlighted the case of ***Jide Oyekunle****, a photojournalist with the Daily Independent newspaper who is also a local representative of the Nigeria Union of Journalists (NUJ), was arrested on 1 August in Abuja because of his presence at a protest, despite telling the police he was a journalist. The police seized his phone and kept it for several hours before returning it to him."* (See Exhibit 2B- Publication of the online newspaper "*Reports Sans Frontiers"* (RSF))

b) "*Nigeria: Police detained a journalist from the Daily Independent newspaper covering the protest #EndBadGovernance in Abuja, having also seized his mobile phone*" (See Exhibit 2C- Publication of the online newspaper "*SAHARA REPORTERS"*)

c) "*Stop using repressive laws to target journalists and critics," they call on SERAP and the Nigerian Guild of Editors to the Bola Ahmed Tinubu government, governors and other authorities*" (See Exhibit 5A- "SERAP´s report on the Respondent´s targeting of journalists in Nigeria")

d) "*In Nigeria, at least 56 journalists were targeted for attacks and harassment as protests shook the region.* "(See Exhibit 5B - "*Report of the Committee to Protect Journalists on Attacks against Journalists in Nigeria*")

iii. A video from "*ROOTSTV*" where police officers can be seen restraining the Applicant and where he was interviewed, stating that he had been detained by the police officers, who took his mobile phone and did not return it. (See Exhibit No. 1)

80. The Court accepts the validity of the documents described above and presented by the Applicant, especially since the Respondent did not object to these documents nor question their authenticity or veracity in its statement of defence. (See Inter-American Court, *VERASQUEZ RODRIQUEZ v. HONDURAS* (Preliminary Exceptions) (1987) §, 140); *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. The FEDERAL REPUBLIC OF NIGERIA,* Judgment No. ECW/CCJ/JUD/11/21 § 60).

81. In the instant case, the Respondent to justify the above facts, alleged that the protest was violent, that the protesters in Eagle Square Abuja tried to attack the Three Arms Zone, where the Respondent's government headquarters, which includes the National Assembly, are located, the Supreme Court and ASO Villa, that Nigerian police officers faced violent protesters to prevent them from attacking the Three Arms Zone using tear gas; that the Applicant was a violent protester who refused to adhere to the warnings of the Nigerian police force (who were trying to prevent protesters from entering the Three Arms Zone); that it was due to the Applicant's refusal to adhere to the instruction that was legally detained, but was later released immediately after having identified himself.

82. First, the Court notes that the Respondent, despite alleging violence of the protest and that the Applicant was a violent protester who refused to adhere to the warnings of the Nigerian police force (who were trying to prevent the protesters from entering the Three Arms Zone), did not provide evidence to support such facts, the burden of which was on it.

83. Moreover, the Respondent's agents in adopting the measures (the use of tear gas, arrest the Applicant while covering the above), the Respondent had the burden of justifying such restrictions (see *GRYB v. BELARUS* (CCPR/C/103/D/1316/2004), §13.4.).

84. That is, the Respondent must be able to demonstrate that the restrictions meet the requirements of legality, necessity and that they are proportional. Where this burden is not fulfilled, this right is violated. (See Human Rights Committee, General Comment No. 37 §, 36; *CHEBOTAREVA v. RUSSIAN FEDERATION* (CCPR/C/104/D/1866 /2009), §9.3 and African Commission, *MALAWI AFRICAN ASSOCIATION & ORS v. MAURITANIA*, Comm 54/91, 61/91, 98/93, 164-196/97 e 210/98 (2000), §111)

85. In this regard, the Court wrote in the above case *AMNESTY INTERNATIONAL TOGO & 7 ORS v. TOGO* that:

> "*(...) The Court therefore finds that the Respondent has not produced evidence, by reference or otherwise, of the existence of such legislation. Accordingly, the Court concludes that the fact that the Respondent State is unable to produce the said law constitutes evidence that its actions were not carried out in accordance with the law and, consequently, upholds the principle that no action may be brought on an unlawful ground.*
>
> *In the instant case, as examined, it is clear that, in the absence of a legal basis, the Respondent violates Article 9 of the African Charter on Human and Peoples' Rights. The Court therefore finds that the fact that the Respondent has blocked access to the Internet constitutes a breach of the right of applicants to freedom of expression*'. (para. 45) (See also the aforementioned case *SERAP &3 ORS v. FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/40/22, para. 85)

86. It should be noted that, although the Respondents alleged that the police officers had resorted to those measures, they neither claimed nor succeeded in proving – a burden of proof which falls on them –

which legal provisions they had relied upon to justify such measures, in order to comply with the above provisions.

87. The Court reiterates, as stated above, that whenever a decision is taken to impose any form of restriction on freedom of expression, the responsible authorities must disclose the specific legal provisions for which they are competent and authorised to impose such restrictions.

88. This was not the case in the present proceedings, as the Respondent failed to prove these facts, the burden of proof for which was on it.

89. The Court therefore notes that the principle of legality has not been respected in this case.

90. Consequently, this undermines the analysis of the remaining principles, given that they are principles of cumulative verification. (See *SUNDAY OLANIRAN AYODEJI v. THE FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/33/23, para. 132)

91. In this sense, the Court finds that the Respondent violated Articles 19 of the DUDH, 9 and 27 (2) of the African Charter and 19 of the ICCPR.

b) On the alleged violation of freedom

Applicant's Arguments

92. To substantiate the violation of the above law, the Applicant claimed that the Federal Capital Territory Police Commissioner (FCT), Mr. Benneth Igweh, a senior agent of the Respondent, who physically assaulted him, handed him over to some subordinate officers; that he was arrested, for invasion of property and illegal assembly, for covering a peaceful protest in a public place, that he was detained for about 8 hours, and was later released following the intervention of FCT police command spokeswoman Josephine Adeh.

Respondent's Arguments

93. The Respondent, in turn, stated that the Applicant was a violent protester, who refused to obey the orders of the police (who tried to restrict the access of the protesters to the Three Arms Zone), that in this sequence the Applicant was legally detained, but released immediately after identifying, without his rights being violated.

Analysis of the Court

94. Article 6 of the African Charter states that:

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

95. UDHR in Articles 3 and 9 and the ICCPR in Article 9 (1) establish in the same vein.

96. Similarly, Article 7 of the American Convention on Human Rights and Article 5 of the European Convention on Human Rights guarantee the right to liberty and security of individuals, the latter being the only one that specifically lists, in paragraphs (a) to (f), the grounds that can legally justify the deprivation of liberty.

97. Deprivation of liberty is permitted only in the following cases:

*"**(a)** the lawful detention of a person after conviction by a competent court;*

***b**) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

***c**) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably*

considered necessary to prevent his committing an offence or fleeing after having done so;

d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*

e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."*

98. Detention or deprivation of liberty occurs as soon as an individual is forcibly held in a police station or prison or when an authority orders them to remain in a certain place.

99. All the aforementioned human rights protection instruments guarantee individuals the right to liberty and security of person, establishing that deprivation of liberty must, in all cases, take place for reasons and under conditions previously determined by law (i.e. domestic or national law of the States Parties), i.e. in compliance with the principle of legality (see Human Rights Committee, General Comment No. 35 §22).

100. In this regard, the Court rendered in the case of *BENSON OLUA OKOMBA v. REPUBLIQUE DO BENIN*, ECW/CCJ/JUD/05/15, that: "*The above-mentioned human rights treaties provide that deprivation of liberty within the framework of a State must, in all cases, be carried out in accordance with the law.*"(pag.16) (see also the case, *CHIEF EBRIMAH MANNEH v. THE REPUBLIC OF GAMBIA,* judgment No ECW/CCJ/JUD/03/08 in LR 2004-2009, (§15), *BADINI SALFO v.*

REPUBLIC OF BURKINA FASO, Judgment No ECW/CCJ/Jud/13/12) and the Court referred in the case, *DAME HADJITOU MANI KORAOU v. REPUBLIC OF NIGER*, Judgment No ECW/CCJ/06/08, that "An arrest is considered arbitrary when it has no legal basis." (§91).

101. The African Court on Human and Peoples' Rights (ACHPR), in judgment delivered in the case *ONYACHI AND NJOKA v. TANZANIA* (Application No. 003/2015, of September 28, 2017) highlighted the three criteria established by international human rights jurisprudence to determine whether a deprivation of liberty is arbitrary, as being the following:

"(...) the legality of the deprivation, the existence of clear and reasonable grounds and the availability of procedural guarantees against arbitrariness", having concluded that: "These are cumulative conditions, and failure to comply with any of them makes the deprivation of liberty arbitrary." (See also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa adopted by the African Commission, Principle M. [1. (b)]).

102. In the case *GLORY OKOLIE v. FEDERAL REPUBLIC OF NIGERIA,* this Court reaffirmed *judgment No. ECW/CCJ/JUD/38/24 (21 November 2024*), that these are cumulative conditions and failure to meet one of them renders the deprivation of liberty arbitrary.

103. Thus, detention or imprisonment is considered arbitrary, when it occurs in breach of national or international law and this happens whenever there is a lack of legitimacy or reasonable grounds for its decree or maintenance (see the judgment ECW/CCJ/JUD/05/17 of this Court, delivered in the case *OBENSON OLUA OKOMBA v. REPUBLIC OF BENIN* (pag.16) and Judgment No.

ECW/CCJ/JUD/04/09, delivered in the case, *AMUZO HENRI & ORS v. REPUBLIC OF COTE D'IVOIRE*, § 88); see also *MARTIN GEGENHEIMER & 4 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & ANOR* , delivered in the Judgment No. ECW/CCJ/JUD/03/21, of 04 march 2021 §, 104 and *KODJO ALAIN VICTOR CLAUDE v. REPUBLIC OF COTE D'IVOIRE*, Judgment No. ECW/CCJ/JUD/09/21, §53).

104. This Court emphasises that the validity of any arrest depends on its lawfulness and reasonableness; it is not sufficient merely for the power to arrest to be provided for by law. In *the case GLORY OKOLIE v. FEDERAL REPUBLIC OF NIGERIA, judgment No. ECW/CCJ/JUD/38/24,* the Court noted that, despite the serious accusations of the State, the absence of a legally valid mandate and the failure to present the detainee to an independent court to rule on the case in legal time constitute clear violations of Article 6 of the African Charter (see *SIKIRU ALADE v. FEDERAL REPUBLIC OF NIGERIA (2012) ECW/CCJ/JUD/10/12, p.* 207).

105. In the instant case, the Applicant claimed that he was detained by the police as described above.

106. As mentioned above, the facts alleged by the Applicant were corroborated by the evidence that the Applicant gathered to the application initiating proceedings, namely the photos in the online newspapers and the video above (Exhibit No. 1), where police officers can be seen holding the Applicant.

107. Furthermore, the Respondent admitted that the Applicant was legally detained, although it alleged that the detention was legal, and that the Applicant was released immediately after identifying himself.

108. As in the *judgment AFANVI AKUYO c. REPUBLIC OF TOGO, judgment No. ECW/CCJ/JUD/11/25 (17 March 2025*), the Respondent

did not submit any concrete evidence or circumstance to justify that the detention was in accordance with national or international law. In the above-mentioned precedent, the Court found that the silence or lack of specific State challenge would allow us to assume as true the facts alleged by the victim when the existing evidence is consistent *(VILLAGRAM MORALES AND OTHER v. GUATEMALA, COURT IDH, 19 November 1999)*.

109. Accordingly, in view of absence of any evidence presented by the Respondent to justify that the Applicant's detention was in accordance with national or international law, the Court finds that the Respondent violated the Applicant's right to liberty under Articles 9(2) and (2) of the Covenant, Articles 3 and 9 of the UDHR and Article 6 of the African Charter.

c) **The alleged violation of the right of the Applicant to respect for the inherent dignity of a human being and the prohibition of torture, cruel, inhuman and degrading treatment**

Applicant's Arguments

110. In support of his claim that the above right had been violated, the Applicant alleged that he had been assaulted, maltreated and handled inappropriately; that his camera had been destroyed whilst he was carrying out his journalistic duties during the aforementioned protest; that his family had been subjected to torture and torment as a result of threats and calls from state and non-state agents of the Respondent; and that the seizure and installation of wiretaps on the Applicant's mobile phone, whilst he was being searched by the Respondent's agents, constitute cruel treatment of the Applicant.

Respondent's Arguments

111. The Respondent refuted the above facts, stating that it did not assault or harass the Applicant, resulting in the alleged damage to the Applicant's Canon EOS 70D Mark III camera; and that officers of the Nigerian Police Force were not aggressive towards any of the protesters.

Analysis of the Court

112. Article 5 of the African Charter states that:

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

113. It should be noted that the first instrument to guarantee this right is the UDHR of 1948, which states that "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*".

114. This right is also guaranteed in the same way in several other human rights protection instruments, namely the ICCPR (Articles 7 and 10) and the CAT.

115. It is this Convention (CAT) which, in its Article 1 (1), defines the concept of "Torture" as:

"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person

acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." (A similar definition can be found in Article 2 of the Inter-American Convention to Prevent and Punish Torture).

116. The African Commission followed the same understanding in the case *SUDAN HUMAN RIGHTS ORGANISATION & CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) v. SUDAN, Communication No. 279/03-296/05§156.*

117. And because every individual is entitled to respect for the dignity inherent in every human being and to recognition of their legal status, the prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute (see African Commission, *GABRIEL SHUMBA v. ZIMBABWE*, Communication No 288/04, §167; Human Rights Committee, General Comment No. 20 §3).

118. As we have seen, Article 5 of the Charter, which aims at protecting both human dignity and the physical and mental integrity of the individual, prohibits not only torture but also cruel, inhuman or degrading treatment.

119. This includes not only actions that cause severe physical or psychological suffering, but that humiliate the individual or force him to act against his will or conscience (see the aforementioned case *GABRIEL SHUMBA v. ZIMBABWE*, Communication No. 288/04, §164, *PRIVATE ALIMU AKEEM v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/RUL/01/14, CCJRL, §50).

120. From the above and following the definition of the concept of Torture given by the aforementioned Convention, it is possible to extract 3 essential elements for an act to be qualified as torture: 1- Infliction of severe mental or physical pain or suffering; 2- For or with

the consent or acquiescence of State authorities; 3- For a specific purpose, such as obtaining information, punishment or intimidation (See *HANDBOOK ON STATE OBLIGATIONS UNDER THE UN CONVENTION AGAINST TORTURE,* pg. 24).

121. This understanding was also accepted by this Court in the case *MR. FEDERAL REPUBLIC OF NIGERIA & ANOR*, Judgment No. ECW/CCJ/JUD/14/19, pp.13 and 14 and also in the case *HON. JUSTICE ALADETOYINBO v. NIGERIA*, Judgment No. ECW/CCJ/JUD/18/20, § 66).

122. It should also be noted that the aforementioned CAT did not define the concept of "inhuman or degrading treatment".

123. The Convention, in its Article 16 (1), imposes on the State party the obligation to prevent, in any part of the territory under its jurisdiction, other acts constituting cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in its Article 1.

124. This means that the concept of "torture" absorbs that of "inhuman or degrading treatment" and that it is by excluding the elements that make up the definition of "torture" that an act is qualified as "inhuman or degrading treatment" whenever it involves a level of severity and cruelty that affects the victim's human condition dignity.

125. It has therefore been the role of jurisprudence to concretize the concept of "inhuman and degrading treatment". This is what happens in the case law of the European Court, when it considers that treatment is considered "inhuman" when it is premeditated and applied for hours at a time in such a way as to cause real bodily harm or intense physical or mental suffering, and "degrading" when it humiliates or demeans an individual, showing a lack of respect or diminishing their human dignity, or arouses feelings of fear, anguish or inferiority capable of

breaking down an individual's moral and physical resistance. It was also admitted that it may be enough for the victim to be humiliated in his own eyes, even if not in the eyes of others (see the case *MSS v. BELGIUM AND GRÉCIA*, Application No. 30696, Judgment of January 21, §220 - 221).

126. This Court, in the case *GABRIEL INYANG LINUS IYEBE v. REPUBLIC FEDERAL DA NIGERIA*, Judgment No. ECW/CCJ/JUD/20/18 of June 29, 2018, relied on the same case law to define the concept and scope of inhuman and degrading treatment (§see 6.3 4.6.3.5, p. 14 -15).

127. Having now examined the concepts of 'torture' and 'inhuman or degrading treatment', it is now necessary to determine whether the facts put forward by the Applicant fall within the definition of torture.

128. On the basis of an objective analysis of the facts described above, it is clear that these facts contain the three essential elements required for an act to be classified as torture, as identified above.

129. The question that now arises is whether the Applicant was in fact subjected to the events described above, and on whom the burden of proof lies in the case of the alleged human rights violations.

On the burden of proof

130. With regard to claims or allegations of acts of torture, the understanding is that the initial burden of proof lies with the Applicant to establish a factual basis to support his/her allegations; in other words, it is required, in particular, that allegations of torture be substantiated, that details be provided regarding the date, the location, the acts committed and any effects the victims may or may not have suffered as a result. (See the case *CIVIL LIBERTIES ORGANISATION, LEGAL DEFENCE CENTRE AND LEGAL*

DEFENCE AND ASSISTANCE PROJECT v. NIGERIA, Communication No. 218/98, §45)

131. In the same vein, this Court has ruled in the cases of *BENSON OLUA OKOMBA v. REPUBLIC OF BENIN*, Judgment No. ECW/CCJ/JUD/05/17, pg. 10; *MR. NOEL MIAN DIALLO v. FEDERAL REPUBLIC OF NIGERIA & ANOTHER*, Judgment No. ECW/CCJ/JUD/14/19, p. 14.

132. On the other hand, in the case, *GABRIEL SHUMBA v. ZIMBABWE*, Communication No. 288/04 §, 159), the African Commission noted that, in order to refute the Applicant's allegations, *"(...) It is not sufficient for the State to limit itself to claiming that the charges are not justified when they are supported by a set of documents. On the contrary, it is up to the Respondent State to provide evidence to the contrary."*.

133. In other words, when an applicant makes a substantiated allegation of fact, the State is obliged to respond. When the State does not respond to contest the prima facie case made by the Applicant, the Commission accepts the version of the facts presented by the Applicant (see *MALAWI AFRICA ASSOCIATION AND ORS v. MAURITANIA*, Communication Nos. 54/91, 61/91, 98/93, 164-169/97 and 210/98, § 92, 103).

134. This Court has adopted a similar position, ruling in favour of torture victims in cases where the Respondent States simply deny the allegations made about torture, without providing any substantiated evidence. (See the cases of *MUSA SAIDYKHAN v. THE REPUBLIC OF THE GAMBIA*, Judgment No. ECW/CCJ/JUD/11/07, paras. 37–42).

135. This Court has repeatedly stated that: *"Under the principle of evidence, when the Applicants make statements about torture,*

inhuman and degrading treatment, the Respondent State must go beyond mere denial and provide evidence to show that the Applicants were treated with respect and dignity." See case *FARIMATA MAHAMADOU & 31 ORS v. REPUBLIC OF MALI*, Judgment No. ECW/CCJ/JUD/01/20, p. 23, 26; *MR. MR. NOEL MIAN DIALLO v. FEDERAL REPUBLIC OF NIGERIA & ANOTHER*, Judgment No. ECW/CCJ/JUD/14/19, p. 14.

Application of the above principles to the instant case:

136. As can be seen from the statement of the facts set out above by the Applicant, it accurately sets out the circumstances, including the time and place of the events, describing the acts committed and the persons responsible (see paragraphs 2.3 to 2.12 of the originating application).

137. Also, to corroborate his specific allegations, the Applicant, joined (with doc. 1) a set of evidence as listed above.

138. In view of the Applicant's detailed allegations, supported by the aforementioned documents and videos, it was incumbent upon the Respondent to specifically refute each of the aforementioned facts, in accordance with the above, and to submit evidence to support its version of events.

139. In other words, the Respondent should have provided evidence to the contrary, but failed to do so, opting instead to make a general denial (see the aforementioned case of *GABRIEL SHUMBA v. ZIMBABWE*, §159).

140. It is reiterated, as stated above, that if the Respondent does not specifically contest the facts set out by the Applicant and does not submit evidence to support its claims, the Court will accept the version of events presented by the Applicant.

141. Accordingly, based on a combined analysis of the aforementioned evidence, which unanimously confirms the facts alleged by the Applicant, and given that the Respondent has chosen to put forward a generic defence, it must be concluded that the said facts have been proven beyond any reasonable doubt.

142. In other words, the detailed account of the facts presented by the Applicant, supported by the documentary evidence and the video footage submitted by him, is sufficient to establish in the mind of the judge a firm conviction that, during the aforementioned demonstration on 1 August 2024, whilst the Applicant was covering a peaceful protest, the police fired tear gas at the protesters. Whilst attempting to seek refuge in a safe place, the Applicant was dragged away by police officers, who also seized his mobile phone, claiming that he was not authorised to livestream the event; he was detained for approximately eight hours, on charges of trespassing and participating in an unlawful assembly, and was subsequently released following the intervention of the spokesperson for the FCT Police Command, Josephine Adeh.

143. Such acts are humiliating and demeaning to anyone placed in the Applicant's situation; they demonstrate a lack of respect, undermine human dignity, and give rise to feelings of fear (as alleged by the Applicant), distress or inferiority capable of breaking an individual's moral and physical resilience.

144. Thus, the performance of agents of order and of security regarding the Applicant constitutes "torture" in the light of Article 1 of CAT.

145. On the other hand, there is no information in the case file as to whether, in relation to the Applicant's case, the Respondent launched an investigation and, if so, what the outcome was.

146. The Court notes that an unlawful act that violates human rights and which is not initially directly attributable to a State may give rise to the State's international responsibility, not for the act itself, but for its failure to exercise due diligence to prevent the violation or to respond to it as required by the African Charter (see *THE REGISTERED TRUSTEES OF GAN ALLAH FULANI DEVELOPMENT ASSOCIATION OF NIGERIA v. FEDERAL REPUBLIC OF NIGERIA, TARABA STATE GOVERNMENT OF NIGERIA*, Judgment No. ECW/CCJ/JUD/06/23 § 60; the African Commission, *ZIMBABWE HUMAN RIGHTS NGO FORUM v. ZIMBABWE*, Communication No. 245/02 § 145; *MRS MODUPE DORCAS AFOLALU v. THE FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/15/14 § 55).

147. The Respondent did not specify the measures it had taken to address the human rights violations, including the arrest and trial of the perpetrators and the possible payment of compensation to the Applicant (see *THE REGISTERED TRUSTEES OF GAN ALLAH FULANI DEVELOPMENT ASSOCIATION OF NIGERIA v. FEDERAL REPUBLIC OF NIGERIA, TARABA STATE GOVERNMENT OF NIGERIA*, Judgment No. ECW/CCJ/JUD/06/23, paras. 69–72).

148. This Court finds that, in this regard, the Respondent has failed to fulfil the positive obligation imposed upon it by Article 1 of the African Charter and Article 2 of the CAT, which it has ratified, in particular, to protect the Applicant against abuses resulting from the actions of its police officers, by failing to demonstrate that it had taken adequate measures to ensure an independent and effective investigation into the complaint lodged by the Applicant, in which it accused the Respondent's officers of committing acts of torture.

149. In this regard, the Court finds that the Applicant's human right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as guaranteed by Articles 1 and 5 of the African Charter, Articles 1, 2 (1), 4, 10 and 11, 12 and 13 of the CAT, 7 and 10(1) of the ICCPR and 5 of the UDHR, cited above, has been violated by the Respondent.

d) The alleged violation of property rights

Applicant's Arguments

150. In order to allege a breach of the above right, the Applicant claimed that the seizure and temporary confiscation of his mobile phone, which was subsequently returned, and of his video camera, which was seriously damaged by Mr. Benneth Igweh and his colleagues from the Nigerian police force (who are all agents of the Respondent) without any court order, constitutes a violation of the fundamental right of the Applicant to own property.

Respondent's Arguments

151. The Respondent, in turn, denied the above facts, stating that the police officers of the Nigerian police force did not seize any mobile phones belonging to protesters that day.

Analysis of the Court

152. Article 14 of the African Charter provides that:

(1) *"The right to property is guaranteed and can only be affected by public need or in the general interest of the community, in accordance with the provisions of appropriate laws."* (2) "The property right can be individual or collective."

153. Article 17 of the Universal Declaration of Human Rights and Article 1 of Protocol No. 1 to the European Convention on Human Rights provide in the same vein.

154. This Court has already held that the right to property is an important element of economic law, reserved for the individual, as provided for in international instruments, notably Article 17 of the UDHR and Article 14 of the African Charter, and constitutes a human right (see Judgment No. ECW/CCJ/JUD/01/11, delivered in the case of *EL HAJI TIDJANI ABOUBAKAR v. BANQUE CENTRALE DE L'AFRIQUE DE L'OUEST (BCEAO) AND THE STATE OF NIGER*).

155. In its judgment in the case of *DEXTER OIL LIMITED v. THE REPUBLIC OF LIBERIA*, Judgment EWC/CCJ/JUD/03/19, this Court defined the right to property as: "Property that may be claimed by individuals upon presentation of a legal title, proof of ownership or any document conferring a right of ownership".

156. The case law of the European Court of Human Rights (ECHR), based on Article 1 of Protocol No. 1 to the Convention, cited above, stated in the case of *GOGITIDZE & ORS v. GEORGIA*, Application No. 36862/05, 12 May 2015, which states that "*Article 1 of Protocol No. 1 to the European Convention on Human Rights, which essentially guarantees the right to property, comprises three distinct rules. The first, stated in the first sentence of the first paragraph, enshrines the principle of peaceful enjoyment of goods in general. The second rule, in the second sentence of the same paragraph, refers to the deprivation of property, subordinating it to certain conditions. The third provision, set out in the second paragraph, recognises that States Parties have the right, in particular, to regulate the use of property in the public interest. The second and third rules, which concern specific situations of interference with the right to peaceful enjoyment of property, must*

be interpreted in the light of the general principle laid down in the first rule" (see, inter alia, *IMMOBILIARE SAFFI v. ITALY* [GC], no. 22774/93, § 44, ECHR 1999-V).

157. It remains to be determined whether, in this case, the Respondent interfered with the Applicant's property rights.

158. As mentioned above in the analysis of the documentary evidence is:

i. An article in the online newspaper "*Reporters Without Borders*" states: "...*The police seized his mobile phone and kept it in their possession for several hours before returning it to him.*" (See Exhibit 2B)

ii. An article in the online newspaper SAHARA REPORTERS states: "*In Nigeria, the police arrested a journalist from the Daily Independent who was covering the #EndBadGovernance protest in Abuja, and also seized his mobile phone*" (See Exhibit 2C- ")

iii. The video from ROOTS TV showing police officers restraining the Applicant and in which he was interviewed, stating that he had been detained by the police officers and that they had taken his phone and not returned it. (See Exhibit No 1).

159. With regard to the claim relating to the recording chamber, which has been severely damaged by Mr. Benneth Igweh and his colleagues from the Nigerian police force, it is verified that the documents contained in the files are not sufficient to prove the above facts, since:

i) None of the articles published in the online newspapers mentioned above, nor the video referred to, makes any reference to the destruction of the camera by the police officers in question, nor did the Applicant mention such destruction in the interview he gave to ROOTS TV;

ii) From the photographs of the camera included in the case file, it is not possible to determine whether it has in fact been destroyed and, if it had been damaged, who was responsible for doing so. (see Exhibit 3)

160. Consequently, the burden of proof regarding the facts alleged above rested with the Applicant, which was not met; for this reason, the Court finds that these facts have not been proven.

161. The Court, however, has a different understanding of the confiscation of the aforementioned mobile phone, carried out by the police officers of the Respondent.

162. In other words, it should be emphasised that, in view of the Applicant's detailed allegations regarding the seizure of his mobile phone by the aforementioned police officers; allegations supported by the aforementioned documents and the video referred to above, and presented as having occurred and as being attributable to the Respondent's officers; it was incumbent upon the Respondent to refute them specifically and to provide a credible explanation.

163. The Respondent should have provided evidence to the contrary, but failed to do so, opting instead to issue a general denial of the facts, claiming, in essence, that Nigerian Police Force officers did not seize any mobile phones belonging to other protesters on that day, without, however, submitting any evidence to the case file to support its claims, namely the statements of the aforementioned Nigerian Police Force officers. (See the case of *GABRIEL SHUMBA v. ZIMBABWE*, para. 159, and *MRS SESSI MÉLÉ v. THE REPUBLIC OF TOGO*, Judgment No. ECW/CCJ/JUD/29/2021, paras. 161, 162 and 163).

164. It is reiterated that it is not sufficient for the Respondent to simply deny the facts when they are supported by a series of documents; therefore, if the Respondent fails to respond by

specifically contesting the case, supported by evidence, as set out by the Applicant, the Court will accept the version of the facts presented by the Applicant.

165. Accordingly, based on a combined analysis of the aforementioned evidence, which unanimously confirms the facts alleged by the Applicant, and given that the Respondent has opted for a general denial of the facts without producing any evidence to support its version, it is the Court's view that the said facts have been proven beyond any reasonable doubt, that is to say, that the facts occurred as described by the Applicant (See the case of *MR. AGBOGBO KOSSI EDEM v. THE REPUBLIC OF TOGO*, Judgment No. ECW/CCJ/JUD/28/23, para. 84).

166. Taking into account the case law referred to above, and in view of the documents cited above and the Respondent's failure to contest the fact that the Applicant is the owner of the mobile phone in question, it is concluded that the Applicant is the owner of that mobile phone and that the events occurred as described above.

167. As a general rule, the right to property requires that the owner not be subject to any interference in the enjoyment of their property, particularly from the State (see African Commission, Communication No. 276/2003, May 2009, *CENTRE FOR MINORITY RIGHTS DEVELOPMENT (KENYA) AND MINORITY RIGHTS GROUP INTERNATIONAL ON BEHALF OF ENDOROIS WELFARE COUNCIL v. KENYA*, § 86; this Court, in Judgment ECW/CCJ/JUD/05/17 of 10 October 2017, delivered in the case of *BENSON OLUA OKOMBA v. REPUBLIC OF BENIN*).

168. However, there is an exception to this rule, which means that this right is not an absolute right, since it may be subject to state intervention provided that the following requirements are

cumulatively met: the principle of legality, the requirement of general or public interest, and the principle of proportionality (see *CHIEF DAMIAN ONWUHAM & 22 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR*, Judgment No. ECW/CCJ/JUD/22/18, p. 20; and *DEXTER OIL LIMITED v. THE REPUBLIC OF LIBERIA*, Judgment No. ECW/CCJ/JUD/03/19, p. 24).

169. Thus, the principle of legality requires that any interference with the right to property must be provided for by law; furthermore, such a law must be published and accessible, and must possess certain qualitative characteristics in order to be "compatible with the rule of law" (see *ECtHR, JAMES v. THE UNITED KINGDOM*, Application No. 8793/79, Judgment of 21 February 1986, to 67.).

170. Legal interference with an individual's property rights must also satisfy the test of legitimacy, that is to say, it must serve the general or public interest (see the European Court of Human Rights, in the case of *JAMES V. THE UNITED KINGDOM*, § 46, and also "The Right to Property", Human Rights Handbooks No. 4, Council of Europe 2001" pag. 26 a 28).

171. Finally, it should be noted that there must be proportionality between the means employed and the objective to be achieved (see African Commission on Human and Peoples' Rights, 31 October 1998, Communications, No. 105/93, 128/94, 130/94, 152/96, 22–31 October 1998, *MEDIA RIGHTS AGENDA AND CONSTITUTIONAL RIGHTS PROJECT V. NIGERIA*, p. 77).

172. Turning to the concrete case, the Court will now examine whether the requirements have been met:

(i) legality of interference

173. As proved above, the police officers of the Respondent confiscated the Applicant's mobile phone as a result of the aforementioned protest.

174. The Respondent did not refer to the legal provision authorising its agent to seize the Applicant's property, nor did it state whether it had, in fact, effectively investigated such acts carried out by its agent, as set out above.

175. Accordingly, the Court therefore finds that the confiscation of the Applicant's mobile phone does not comply with the requirement of 'legality' set out in Article 14 of the African Charter; as a result, the examination of the other requirements laid down in that article is compromised, since they are subject to cumulative verification, as mentioned above.

176. The Court will examine the Respondent's liability under the principles of State responsibility.

177. It is reiterated that this principle provides that Member States are held liable for the acts or omissions of their officials, institutions or bodies acting in an official capacity, even if such acts were committed outside the scope of their official authority or in breach of national law. Thus, when the agents of a State violate the rights of an individual or individuals, such violations shall be attributable to the State, whether or not they were authorised by it, thereby establishing the State's international responsibility for those acts or omissions (see *TIDJANE KONTE & ANOR v. THE REPUBLIC OF GHANA*, Judgment No. ECW/CCJ/JUD/11/14, paras. 28–40; *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. FEDERAL REPUBLIC OF NIGERIA*, Interim Judgment No. ECW/CCJ/RUL/01/21, pp. 18–20; *COL. MOHAMMED SAMBO*

DASUKI (RTD) v. FEDERAL REPUBLIC OF NIGERIA, Judgment No. ECW/CCJ/JUD/23/16, p. 28.).

178. Consequently, the conduct of the aforementioned officers of the Respondent's police force who confiscated the mobile phone in question, thereby preventing the Applicant from using it, is attributed to the Respondent, which is considered indirectly liable.

179. In this regard, the Court finds that the Respondent violated the Applicant's right to property, as enshrined in Article 17 of the Universal Declaration of Human Rights and Article 14 of the African Charter.

e) The alleged breach of the right to privacy

Applicant's Arguments

180. In order to allege a breach of the above right, the Applicant claimed that the search of his mobile phone by the Respondent's agents, the deletion of the contents of his phone and the installation of listening devices on that mobile phone to monitor the Applicant constituted a breach of his right to privacy, as protected by the international law applicable in this Court; that there is no legitimate reason for the Respondent's interference with the Applicant's privacy, since the Applicant was not under investigation for any crime nor had he been ordered by a court to be monitored by the Respondent.

Respondent's Arguments

181. The Respondents, on the other hand, denied the above facts, stating that officers of the Nigerian Police Force did not seize any mobile phones belonging to other protesters on that day; nor did officers of the Nigerian Police Force extract information from any

mobile phone belonging to any protester in order to monitor the protesters' calls and/or movements, as alleged.

Analysis of the Court

182. Article 12. of the UDHR establishes that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Every- one has the right to the protection of the law against such interference or attacks."

183. Similarly, Article 17 of the ICCPR provides that:

"*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

Everyone has the right to the protection of the law against such interference or attacks."

184. The right to privacy is essential for individuals to express themselves freely. (See United Nations, Human Rights Council, "*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*", para. 53)

185. The United Nations Human Rights Committee (HRC), in its General Comment No 16 (1988), stressed that the above right should be guaranteed against all such interference and attacks, regardless of their origin, whether from State authorities or natural or legal persons. The obligations imposed by this article require the State to adopt legislative measures and other measures necessary to enforce the prohibition of such interference and attacks, as well as to ensure the protection of that right. The Committee also held that the right to

privacy encompasses protection against surveillance, wiretapping, data collection and unlawful searches, including in the digital setting. The Committee emphasised that any interference must be lawful, necessary and proportionate to a legitimate aim, and that this applies to both State actors and private entities, thereby imposing on States an obligation to regulate the activities of companies that collect or process personal data (See para. 1 to 8).

186. Article 8 of the European Convention on Human Rights (ECHR) protects the right to respect for private and family life, home and correspondence.

187. The case law of the European Court of Human Rights has been particularly extensive in defining the limits of State interference and in protecting privacy in the context of new technologies.

188. In the case of *KLASS AND OTHERS v. GERMANY*, the Court recognised that covert surveillance may be necessary for national security, but only if adequate and proportionate safeguards against abuse are in place (See Application No. 5029/71), 6 September 1978, para. 37 to 60).

189. In the case of *S. AND MARPER v. THE UNITED KINGDOM*, the Court ruled that the indefinite retention of biometric data relating to individuals who had not been convicted violated Article 8, emphasising the principle of proportionality and the need for effective protection of personal data (See Applications Nos. 30562/04 and 30566/04, 4 December 2008, para. 66 ff).

190. More recently, in the case of *BIG BROTHER WATCH AND OTHERS v. THE UNITED KINGDOM*, the ECtHR reiterated that mass surveillance and the indiscriminate collection of communications data violate Article 8 due to a lack of adequate safeguards, transparency and independent oversight, stating in relation

to telephone tapping that: "*334. In cases where the legislation permitting secret surveillance is contested before the Court, the lawfulness of the interference is closely related to the question whether the "necessity" test has been complied with and it is therefore appropriate for the Court to address jointly the "in accordance with the law" and "necessity" requirements. The "quality of law" in this sense implies that the domestic law must not only be accessible and foreseeable in its application, it must also ensure that secret surveillance measures are applied only when "necessary in a democratic society", in particular by providing for adequate and effective safeguards and guarantees against abuse (see Roman Zakharov, cited above, § 236; see also Kennedy, cited above, § 155).*

335. In this regard it should be reiterated that in its case-law on the interception of communications in criminal investigations, the Court has developed the following minimum requirements that should be set out in law in order to avoid abuses of power:

(i) the nature of offences which may give rise to an interception order;

(ii) a definition of the categories of people liable to have their communications intercepted;

(iii) a limit on the duration of interception;

(iv) the procedure to be followed for examining, using and storing the data obtained;

(v) the precautions to be taken when communicating the data to other parties;

and (vi) the circumstances in which intercepted data may or must be erased or destroyed (see Huvig, cited above, § 34; Kruslin, cited above, § 35; Valenzuela Contreras, cited above, § 46; Weber and Saravia, cited

above, § 95; and Association for European Integration and Human Rights and Ekimdzhiev, cited above, § 76). In Roman Zakharov (cited above, § 231) the Court confirmed that the same six minimum safeguards also applied in cases where the interception was for reasons of national security; however, in determining whether the impugned legislation was in breach of Article 8, it also had regard to the arrangements for supervising the implementation of secret surveillance measures, any notification mechanisms and the remedies provided for by national law (see Roman Zakharov, cited above, § 238). 336. Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated.

As regards the first two stages, the very nature and logic of secret surveillance dictate that not only the surveillance itself but also the accompanying review should be effected without the individual's knowledge. Consequently, since the individual will necessarily be prevented from seeking an effective remedy of his or her own accord or from taking a direct part in any review proceedings, it is essential that the procedures established should themselves provide adequate and equivalent guarantees safeguarding his or her rights." (See Applications Nos. 58170/13, 62322/14 and 24960/15), para. 334 to 336)

191. These precedents reinforce the view that privacy is a dynamic right, which must keep pace with technological advances and new forms of digital interference.

192. In the instant case, the Applicant claimed that the Respondent's action to seek, delete content, place listening on his mobile phone and to monitor him, including his family and his home, constitutes a violation of the right herein under consideration.

193. In support of the above facts, the Applicant attached Exhibit 4 to the case file, which he described as "*A screenshot of calls made by agents of the Respondent State from private numbers.*"

194. However, upon examining the document in question, the Court is unable to determine who actually called the Applicant.

195. Furthermore, the Applicant did not submit any evidence to the Court to show that the Respondent's agents deleted content from his mobile phone, bugged his mobile phone, or monitored him, including his family and his home.

196. The onus was on the Applicant and he failed to do so.

197. Consequently, in the absence of any evidence to substantiate the above facts, the Court finds that the Respondent did not violate the Applicant's right to privacy as guaranteed by Article 17 of the ICCPR and Article 12 of the UDHR.

X. REPARATIONS

198. As a result of the violation of his human rights, the Applicant seeks an order from the Court compelling the Respondent to pay him:

i. general damages in the sum of N500,000,000.00 (five hundred million naira) solely for the physical and psychological pain, suffering, emotional trauma and physical injuries caused to the Applicant by the Respondents' agents.

ii. special compensation for the replacement of the cameras by the Applicant in the amount of N5,000,000.00 (Five Million Naira).

Analysis of the Court

199. With regard to the claim for special damages in respect of the camera, this Court reiterates that the burden of proof regarding the material loss lies with the Applicant. As already noted in the analysis

of the merits, it has not been proven that the Respondent's agents actually destroyed the equipment in question. Accordingly, this specific claim for financial compensation must be dismissed.

200. In relation to general (moral) damages, it is a basic principle of international law, established by the *PERMANENT COURT OF INTERNATIONAL JUSTICE (TPJI) IN THE CHORZOW FACTORY CASE (GERMANY V. POLAND, JUDGMENT* No 13, 1928), that the reparation must, as far as possible, eliminate all the consequences of the illicit act and restore the situation that would exist if the act had not been committed (*restitutio in integrum*).

201. This Court is aware that, in the context of human rights, full redress is not always physically possible due to the irreversible nature of violations of physical and moral integrity. In these circumstances, as held by this Court in the case of *DJOT BAYI TALBIA & OTHERS v. THE FEDERAL REPUBLIC OF NIGERIA* (Judgment No. ECW/CCJ/JUD/01/06), every victim of a violation is entitled to just and equitable redress.

202. Financial compensation must cover not only material damage, but also immaterial (moral) damage, which includes physical pain, mental distress, humiliation and the feeling of injustice. International jurisprudence, including that of THE INTER-AMERICAN COURT OF HUMAN RIGHTS, states that moral damage is presumed in cases of arbitrary detention, torture and degrading treatment, since suffering is an inevitable consequence of such violations.

203. In determining the *quantum* of compensation, this Court is guided by the principle of fairness, carrying out a comprehensive assessment that takes into account the seriousness of the violations, the duration of the detention (even if only 8 hours) and the impact on the Applicant's dignity as a journalist carrying out his duties.

Reparation must be victim-centred, aiming at restoring dignity and compensating for the distress caused by institutional harassment.

204. Accordingly, having regard to the nature and diversity of the human rights infringed (freedom of expression, liberty and security, dignity and the prohibition of torture, and property rights), and taking into account the traumatic consequences for the Applicant, the Court, ruling on the basis of equity and reasonableness, awards the sum of 10 million naira as compensation for non-pecuniary damage.

205. As regards the claim for "any other measures", this Court points out that the very fact of delivering a judgment declaring a violation constitutes, in itself, a form of non-pecuniary redress and satisfaction for the victim. However, in order to ensure the Applicant's complete satisfaction and the restoration of his honour, the Court orders the disclosure measures set out in the operative clause.

XI. COSTS

206. The parties said nothing about the payment of expenses.

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

208. Paragraph 2 of the same article states that "*The unsuccessful party shall be ordered to pay the costs, if so decided.*"

209. Therefore, in light of the above provisions, the Court considers that the Respondent, as the losing party, shall bear the costs of the proceedings, which shall be settled by the Chief Registrar.

XII. OPERATIVE CLAUSE

210. For these reasons, having convened in open court and heard both parties, the Court:

On Jurisdiction:

i. The Court declares itself competent;

On admissibility:

ii. Declares the application admissible.

On the merits:

iii. **Declares that the Respondent has violated** the Applicant's right to freedom of expression and to disseminate information, as enshrined in Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 9, and that it has not been demonstrated that the restrictions imposed meet the requirements set out in Article 27(2) of the African Charter.

iv. **Declares that the Respondent has violated** the Applicant's right to liberty and security, in accordance with Article 6 of the African Charter, Article 9(1) of the ICCPR, and Articles 3 and 9 of the UDHR.

v. **Declares that the Respondent has violated** the Applicant's right to respect for the inherent dignity of a human being and the prohibition against torture and inhuman treatment, as guaranteed by Articles 1 and 5 of the African Charter, Articles 1, 2 (1), 4, 10 and 11, 12 and 13 of the CAT, 7 and 10(1) of the ICCPR and 5 of the UDHR.

vi. **Declares that the Respondent has violated** the Applicant's right to property, as guaranteed by Article 14 of the African Charter.

vii. **Declares that the Respondent has not violated** the Applicant's right to privacy, as guaranteed by Article 17 of the ICCPR and Articles 5 and 12 of the UDHR.

viii. Dismisses all the remaining claims.

Orders the Respondent to:

ix. Pay compensation to the Applicant in the amount of 10 million Naira.

XIII. COSTS:

211. Pursuant to Article 66 (2) of the Rules of the Court, the Respondent State shall bear the costs of the proceedings, which shall be settled by the Chief Registrar.

XIV. COMPLIANCE AND REPORTING

212. Orders the Respondent to submit to the Court, within three (3) months of the date of service of this judgment, a report on the measures taken to implement the orders hereby made.

Signed by:

Hon. Justice Ricardo C. M. GONÇALVES - Presiding/Judge Rapporteur

Hon. Justice Sengu Mohamed KOROMA - Member

Hon. Justice Edward Amoako ASANTE - Member

Dr. Yaouza OURO-SAMA – Chief Registrar

Done in Abuja on this 22nd of June 2026, in Portuguese and translated into English and French.