



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

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

In the Matter of

**HOMELAND STUDY GROUP FOUNDATION & 30 ORS V THE
REPUBLIC OF GHANA**

Application No: ECW/CCJ/APP/12/24; Judgment No. ECW/CCJ/JUD/32/25

JUDGMENT

LAGOS

16 May 2025

JUDGMENT NO. ECW/CCJ/JUD/32/25

HOMELAND STUDY GROUP FOUNDATION (HSGF) & 30 ORS

-APPLICANTS

V.

THE REPUBLIC OF GHANA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo Cláudio Monteiro Gonçalves	- President
Hon. Justice Sengu Mohamed Koroma	- Member
Hon. Justice Dupe Atoki	- Member/Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA	- Chief Registrar
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REPRESENTATION OF PARTIES:

Martial Akakpo	- Counsel for the Applicants
Dr. Sylvia Adusu	- Counsel for the Respondent



I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as "the Court") delivered in open Court.

II. DESCRIPTION OF THE PARTIES

2. The Applicants in this suit are:

1. Homeland Study Group Foundation (HSGF), Ho, P.O. Box 1107, Barracks New Town, Phone: 0243570828, Email: hsgfwtl@protonmail.com, bncwtl@protonmail.com, represented by NYAKPO George Kwabla, President of HSGF (Western Togoland), Ho, SDA Down, 0559214946
2. NYAKPO George Kwabla- Ho, SDA Down, Phone: 0559214946
3. AGBEKO Kofi - Ho, barracks New Town, phone: 024 175 2860
4. GBEKU Richard-Ho, Klef, phone: 0593152197
5. AKUDZI Agbenyeg- Ho, Bankoe, phone: 0543023030
6. ARKU Stephen -Peki, phone: 0509218636
7. DENTY Dankwah Francis -Alavanyo Dzogbedze, phone: 0207588615
8. DZIWORKU Francis-Alavanyo Dzogbedze, phone: 0540967635
9. EDEM Peter Godsfriend-Ho, Hliha, Phone: 054 292 7860
10. EKPO Mawuko-Ho, PWD, Phone: 0201741666
11. GBOGBORTSI Euphemia-Wli Todzi, Phone: 024 097 0778
12. KARL David -Kpando Sovie New Town, phone: 0543596445
13. KORLI Emmanuel -Kpando Sovie New Town, phone: 0553311353
14. KUGBLENU Jacinta- Liati, phone: 0540252840
15. MIKPE TORNYI Kodzo-Ho, barracks New Town, phone: 0243104404
16. TOFA Ibrahim-C.K Road, phone: 059864584
17. BRITSIE Faustina- Liati-N/A
18. ADZOGAH Francis, Ve-Golokuati-N/A
19. AKLI Richard-Liati -N/A
20. AKOGO Enestina-Liati-N/A
21. AKUBIA Edem-Golokuati-N/A
22. AMETEOE Wisdom-Leklebi-N/A
23. ATTU Stephen-Dadem New Town-N/A

24. AWUNYO Kennedy-Kpando Torkor-N/A
25. DOTSE Carsmeil-Liati -N/A
26. KORNU Edem-Nsawam Prison-N/A
27. KPEGLO Jerry-Nsawam Prison-N/A
28. SESHIE Sylvanus-Nsawam Prison-N/A
29. TORNYEVIADZI Kwame-Kpando Sovie (Prisons)-N/A
30. YAO BLU Raymond-Kpando Sovie (prison)-N/A
31. YAW Efo -Kpando Torkor (Prison)

(The abovementioned individuals are hereinafter collectively referred to as “Applicants”)

3. The Respondent is the Republic of Ghana, a Member State of the Economic Community of West African States and State party to the African Charter on Human and Peoples’ Rights and other relevant regional and international human rights treaties (hereinafter referred to as “Respondent”).

III. INTRODUCTION

4. Following the declaration of independence over part of Ghana’s territory, referred to as “Western Togoland” by Homeland Study Group Foundation (HSGF), the Respondent allegedly arrested, detained, and subsequently charged the members under Articles 1 and 26 of the Prohibited Organizations Decree of 1976 (S.M.C.D. 20).
5. Consequently, the Applicants filed this Application seeking a declaration that their unlawful arrest and arbitrary detention is a violation of their rights to liberty and self-determination guaranteed by Articles 6, 19, and 20 respectively, of the African Charter on Human and Peoples' Rights and other international human rights instruments.

IV. PROCEDURE BEFORE THE COURT

6. On 5 February 2024, the Applicants filed an Application before the Court alleging violations of their rights to self-determination and liberty. This was served on the Respondent electronically on 5 March 2024.

7. On 12 June 2024, the Respondent requested an Extension of Time to file its Defence. This process was duly served on the Applicants electronically on 19 June 2024.
8. On 26 July 2024, the Respondent submitted its Statement of Defence, which was served on the Applicants electronically on the same day.
9. The Applicants filed their Reply on 27 August 2024. This was served on the Respondent electronically on 03 September 2024. The Respondent did not file a rejoinder after the Applicants' reply.

V. THE APPLICANTS' CASE

a) Summary of Facts

10. The Applicants aver that upon Ghana's independence on 6 March 1957, the former British-administered territory of Togoland was annexed into the new state. This, they argue, was contrary to the intentions of the League of Nations mandate system and the subsequent UN trusteeship arrangement. They claim the plebiscite held in 1956 which approved the annexation of British Togoland to Ghana lacked legitimacy and violated the principle of self-determination, thus giving rise to continued agitation by the Homeland Study Group Foundation (HSGF for the restoration of British Togoland's sovereignty.
11. The Applicants recall that on 9 May 2017, they declared the independence of "Western Togoland," located in Ghana's Volta region. On 25 May 2020, they demanded the withdrawal of Ghanaian security forces and subsequently carried out attacks on police stations in the Tongu area of the region.
12. The declaration of secession was led by Charles Koni Kudzordzi, the leader of HSGF. Following the declaration, confrontations ensued between HSGF members and Ghanaian security forces.
13. The Applicants assert that 81 of their members were arrested in Ho on 8 May 2019 and subsequently prosecuted. Of these, only 10 were released on bail.

14. According to the Applicants, their affiliation with HSGF—a movement advocating non-violent self-determination, was the basis for their arrest and prosecution under the 1976 Prohibited Organizations Decree.

15. They also contend that since 2017, the communities of the Volta, Oti, and parts of northern Ghana (collectively referred to as “Western Togoland”) have been members of the Unrepresented Nations and Peoples Organization (UNPO). They emphasize that HSGF was founded in 1994, registered in 2006, and has consistently pursued its goals through peaceful means such as protest, dialogue, and historical education.

16. The Applicants allege persistent targeting by Ghanaian authorities, who brand the HSGF as a treasonous organization. As a result, members of the Foundation have been subject to recurrent arrests and harassment.

17. Believing themselves victims of serious violations of international law, the Applicants seek redress before this Honorable Court.

b) Applicants’ Plea in Law

18. The Applicants rely on the following instruments to support their claims:

- i. International Covenant on Civil and Political Rights (Articles 19, 21, 22).
- ii. International Covenant on Economic, Social and Cultural Rights.
- iii. Universal Declaration of Human Rights (Article 19).
- iv. African Charter on Human and Peoples’ Rights (Article 20).
- v. Protocol A/SP1/12/01 on Democracy and Good Governance.
- vi. United Nations Declaration on the Rights of Indigenous Peoples.
- vii. United Nations Charter (Chapter XI and XII; Article 2(2)).
- viii. Covenant of the League of Nations (Article 22).
- ix. UNGA Resolutions 224 (III), 326 (IV), 563 (IV), and 1514 (XV).

c) Reliefs Sought by the Applicants

19. The Applicants request the Court to:

- i. Declare that the administration of British Togoland under the League of Nations mandate and UN trusteeship was not properly concluded;
- ii. Declare that the plebiscite of 9 May 1956 lacks legal validity;

- iii. Declare that the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards;
- iv. Find that the arrests and detentions based on the 1976 decree constitute arbitrary detention and violate the right to self-determination.

Accordingly, they ask the Court to:

- v. Order Ghana to end its annexation of Western Togoland and take steps toward its liberation within the framework of international law;
- vi. Order the release of all individuals detained for advocating self-determination;
- vii. Direct the Republic of Ghana to repeal the 1976 Decree from its domestic legal framework;
- viii. Award the HSGF USD 5,000,000 in damages for sustained persecution;
- ix. Award each arbitrarily detained individual USD 125,000 for material, moral, and bodily harm suffered.

VI. THE RESPONDENT'S CASE

a) Respondent's Summary of Facts

- 20. The respondent filed a preliminary objection as to the jurisdiction of the court and also filed a defense.
- 21. In their defense they maintain that HSGF is a secessionist group seeking to unlawfully establish a sovereign state from parts of Ghana's territory—specifically the Volta, Oti, and sections of the northern regions.
- 22. The Respondent avers that on 19 November 2019, Peter Godsfriend Edem was arrested based on investigations linking him to activities connected with a declared independence and efforts to formalize the HSGF.
- 23. According to Ghanaian authorities, HSGF's activities have consistently breached national laws since 2017 and were met with repeated warnings. These activities included unauthorized meetings, seditious declarations, and dissemination of separatist ideologies.
- 24. It is alleged that HSGF organized a rally on 16 November 2019 to formally declare the independence of Western Togoland. The rally was live-

- streamed, and several of the Applicants were identified as organizers and participants.
25. The Respondent provides details of individual Applicants' roles, including event coordination, religious ceremonies, and recruitment efforts. Many of these individuals were actively involved in the alleged declaration of independence.
26. The late Charles Kwame Kudzordzi was identified as the movement's leader. During the 2019 rally, he publicly proclaimed the secession of portions of Ghana's territory.
27. The Respondent avers that investigations also revealed efforts by George Kwabla Nyakpo to recruit a militia and conduct military training. The Respondent asserts that these efforts demonstrate the HSGF's intention to establish a paramilitary force in furtherance of its separatist agenda.
28. As a result, Ghanaian security agencies deemed the HSGF a national security threat.
29. The Respondent confirms that those arrested were charged under S.M.C.D. 20 and those found not to be involved were released. Some individuals remain at large and are wanted by law enforcement.
30. The Respondent contends that all actions taken were in accordance with domestic law and were necessary to preserve national unity and public order.

b) Respondent's Plea in Law

31. The Respondent relies on the following instruments:
- i. Supplementary Protocol A/SP.1/01/05 amending Protocol A/P1/7/91 on the ECOWAS Court of Justice;
 - ii. The 1992 Constitution of Ghana;
 - iii. The Prohibited Organisations Decree (1976);
 - iv. The Criminal Code of Ghana (1960).

c) *Reliefs Sought by Respondent*

32. The Respondent requests the Court to:

- i. Decline jurisdiction to entertain the reliefs sought;
- ii. Declare the application inadmissible as an abuse of process.

VII. *JURISDICTION*

i. *Applicants' Submissions*

33. The Applicants invoke Article 15 of the ECOWAS Revised Treaty and Article 9(4) of the 2005 Supplementary Protocol, which vests the Court with jurisdiction to adjudicate on cases of human rights violations occurring within the territory of any ECOWAS Member State. Based on these provisions, they submit that the Court is competent to entertain the present Application.

34. In light of the above, the Applicants urge the Court to affirm its jurisdiction to entertain the Application.

Respondent's Preliminary Objection

35. The Respondent raised a preliminary objection on the Court's jurisdiction, arguing that the reliefs sought fall outside the Court's mandate as defined by Article 9 of the 2005 Supplementary Protocol. It contends that the Court lacks the authority to invalidate national laws, repeal domestic legislation, or order the release of individuals lawfully detained under national law. In addition, they allege that the application is statute-barred.

Analysis of the Court

36. Article 87 (1-5) of the Rules of the Court provides the procedure for raising an objection not going to the substance of the case. It requires that an objection shall be submitted in a separate document stating the facts and the law relied on amongst others, which the Court must rule upon before proceeding on the merits of the case.

37. The objection raised by the Respondent borders on the jurisdiction of the Court, which is fundamental and requires a decision ahead of the determination of the matter on the merit. The submission of such objection in a separate document is therefore sacrosanct. The Respondent did not



comply with this requirement as all objections raised were canvassed in the defense.

38. The Court recalls that the import of the above provision is that any preliminary objection before the court must be made in a separate document from the document in which substantive issues are addressed. This allows the Court to analyse and adjudge the preliminary objection and the substantive application separately. See N'NADOZIE CHRISTIAN UGOCHUKWU V TOGOLESE REPUBLIC AND ANOR, JUDGMENT NO: ECW/CCJ/JUD/36/23 PAGE 11.

39. The Court reiterates that it is bound by the provisions of its Rules of Procedure, which guides litigants on how processes should be filed before the Court and the procedures to be followed. Therefore, an application that does not comply with the Rules risks dismissal. See MAHAMANE OUSMANE V THE REPUBLIC OF NIGER JUDGMENT NO: ECW/CCJ/JUD/26/22 PAGE 17.

40. Having failed to satisfy the procedural requirements as provided in the aforementioned provisions of the Rules, the Court hereby dismisses the preliminary objection challenging the power of the Court to review national laws, repeal domestic legislation, and the claims of statute-bar.

Other jurisdictional issue

41. Having said that, the Court notes that the facts of the instant case present another jurisdictional issue not canvassed by the parties, regarding an allegation that is not premised on a recognised international treaty, which the Court will examine suo motu in the exercise of its inherent jurisdiction.

42. The jurisdiction of the Court is guided by the enabling law, facts as well as the reliefs sought by the Applicants. See WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) V THE REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/37/19 PG. 11.

43. Paragraph 4 of Article 9 of Supplementary Protocol A/SP.1/01/05 grants the Court jurisdiction to determine cases of violation of human rights that occur in any Member State.

44. The summary of the Applicants case is that, following the declaration of independence over part of Ghana's territory, referred to as "Western Togoland", the Respondent arrested, detained, and subsequently charged the members of the HSGF under Articles 1 and 26 of the Prohibited Organizations Decree of 1976 (S.M.C.D. 20). Consequently, the Applicants allege a violation of their right to self-determination based on the violation of their right to freedom from unlawful arrest and arbitrary detention.

45. They therefore sought the following reliefs:

- i. A declaration that the administration of British Togoland under the League of Nations mandate and UN trusteeship was not properly concluded;
- ii. A declaration that the plebiscite of 9 May 1956 lacks legal validity;
- iii. A declaration that the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards;
- iv. A declaration that the arrests and detentions based on the 1976 decree constitute arbitrary detention and violate the right to self determination.

46. In addressing its jurisdiction in the instant case, the Court will examine the reliefs sought by the Applicants to determine if they align with the powers conferred on it. In that regard, reliefs i and ii will be examined together as they are interrelated.

1. *A declaration that the administration of British Togoland under the League of Nations mandate and UN trusteeship was not properly concluded;*
2. *A declaration that the plebiscite of 9 May 1956 lacks legal validity.*

47. The Applicants have made elaborate expositions in their initiating application of the historical background leading to the filing of this Application. A recount of the summary is essential for the determination of the Court on its jurisdiction in that regard.

48. Before the World War I (WWI) Togoland was a German colony. However, after Germany's defeat, the territory was divided into British Togoland and

French Togoland, administered under the League of Nations mandates, and later UN Trust Territories after WWII. British Togoland was administered as part of the Gold Coast colony now (Ghana), but it remained legally distinct as a trust territory. With the Gold Coast moving toward independence, the future of British Togoland became a pressing issue.

49. The UN Trusteeship Council therefore decided to conduct a Plebiscite held on May 9, 1956, and supervised by the United Nations, with observers present to ensure fairness. The main question was whether British Togoland should integrate with the Gold Coast or remain a separate Trust Territory under UN supervision (with future prospects of independence or other arrangements). A majority voted in favor of integration with the Gold Coast. The UN General Assembly then endorsed the result of the plebiscite and agreed to terminate the trusteeship and British Togoland which was formally merged with the Gold Coast.
50. This plebiscite is the subject matter of the Applicants case where they sought the Court to *declare that the administration of British Togoland under the League of Nations mandate and UN trusteeship was not properly concluded; and that the plebiscite of 9 May 1956 lacks legal validity.*
51. As the Court earlier indicated, the two reliefs are interrelated such that a decision on one inevitably impacts the other. Consequently, the Court will only examine its jurisdiction as it concerns the relief sought on the legality of the plebiscite as the same reasoning will also implicate propriety of the administration of British Togoland under the UN trusteeship.
52. As recounted earlier, the 1956 plebiscite was conducted under the auspices of the United Nations and the British colonial administration, relating to the union of British Togoland with the Gold Coast (now Ghana).
53. It is imperative to note that an application brought under Article 9(4) of the Court's Protocol must be founded upon "*human rights instruments under which the Respondent has undertaken human rights obligations.*" See DIGITAL RIGHTS LAWYERS INITIATIVE V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/23, PARAGRAPH 25. In further explanation in the above referred case, the Court relying on the case of ACTION POUR LA PROTECTION DES DROITS DE L'HOMME (APDH) V COTE D'IVOIRE [2016] 1



AFCLR 668(PARA 57), explained that a human rights instrument is one that (a) expressly enunciates the subjective rights of individuals or groups of individuals, and/or (b) imposes binding obligations on the state parties for the enjoyment of the said rights. See DIGITAL RIGHTS LAWYERS INITIATIVE SUPRA, PARAS 25-30 (SUPRA).

54. The plebiscite is the decision of an action taken in respect of a referendum conducted in 1959. Though carried out under the supervision of the United Nations, it is not an instrument of international recognition, neither is it an international human rights treaty of which Ghana is a signatory, though it is implicated merely as a geographical boundary agreement.
55. The 1956 plebiscite is more of a historical and political matter tied to decolonization and self-determination than a present-day human rights violation under ECOWAS or international human rights law.
56. While the ECOWAS Court has an important role in the West African region, it is not the appropriate forum to rule on the legality of a historical event like the 1956 plebiscite involving British Togoland and Ghana.
57. Based on the above reasoning, the Court holds that it lacks the jurisdiction to make a determination on the legality of the 1956 plebiscite concerning Ghana and a fortiori on the propriety or otherwise of the conclusion of the administration of British Togoland under the League of Nations mandate and UN trusteeship.
58. In that regard, reliefs i and ii sought by the Applicants are therefore dismissed as being outside the jurisdiction of the Court.
1. *A declaration that the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards.*
59. The Applicants' prayers on this head present a key issue for jurisdictional determination, whether the Court can make a determination on the 1976 *Prohibited Organizations Decree* (NRCD 172) same predating its existence.

60. Considering that the alleged unlawful detention of the 2nd to 31st Applicants were premised on the 1976 Decree, the Court will again suo moto examine its jurisdiction relative to the Applicants' allegations to ascertain whether it can make a determination on the *1976 Prohibited Organizations Decree* (NRCD 172) same predating its existence.
61. The Court notes that the Decree in issue was enacted in 1976 by the Supreme Military Council of Ghana under General Ignatius Kutu Acheampong, who led the country following a military coup. It was aimed primarily at banning the activities of organizations and movements perceived as threats to national unity or security, particularly separatist or irredentist groups.
62. The Court also notes that the law in question was enacted in 1976, well before the establishment of the ECOWAS Court's human rights jurisdiction in 2005. On a first count, the Court finds that it predates its existence.
63. For the Court to validly exercise jurisdiction in this regard, it must be established that the law does not predate its existence as it lacks retroactive jurisdiction. See *THE GLOBAL JUSTICE RESEARCH PROJECT V THE REPUBLIC OF LIBERIA* ECW/CCJ/RUL/04/24 PG. 12. See also *TETevi KOKOU & ANOR V TOGOLESE REPUBLIC* ECW/CCJ/JUD/05/23 PG. 11-14.
64. However, where the Applicant demonstrates the existence of a present and continuing violation arising from the said law, the Court will invoke its jurisdiction on the matter. *EVARISTUS DENNIS EGBEBU V FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/14/21. See also *THE GLOBAL JUSTICE RESEARCH PROJECT SUPRA PARA. 54.*
65. The notion of "instantaneous" and "continuous" acts of violations has been aptly distinguished by the provision of Article 14 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001 thus:
1. "The violation of an obligation by an act of a State that is not continuous occurs at the time the act is performed, even if its effects persist.
 2. The violation of an international obligation by an act of a State that is continuous in nature extends for the entire period during which

the act continues and remains in violation of the international obligation.

3. The violation of an international obligation requiring the state to prevent a certain event will take place at the moment that event begins and extends throughout the period during which the event continues and remains in contravention of that obligation." See THE GLOBAL JUSTICE AND RESEARCH PROJECT V THE REPUBLIC OF LIBERIA SUPRA PARA. 55.

66. The African Court on Human and Peoples' Rights has also found credence in this notion where it categorized continuous violations as those which began before the entry into force of the Protocol establishing the Court and persisted after the operationalization of the Protocol. TANGANYIKA LAW SOCIETY & THE LEGAL AND HUMAN RIGHTS CENTRE V TANZANIA, & REVEREND CHRISTOPHER MIKI 009/2011 -011/2011 PARA. 84.

67. In that regard, violations whose effect persist after the critical date, i.e. the date of entry into force of the Protocol, are acts continuing in nature and are exempt from the principle of non-retroactivity. See EVARISTUS DENNIS EGBEBU V FRN ECW/CCJ/JUD/14/21, ALHAJ HAMMANI TIDJANI V FRN & 4 ORS ECW/CCJ/JUD/04/07, CCJELR 2004-2009, SIKIRU ALADE V FRN ECW/CCJ/JUD/10/12 CCJELR 2012, VALENTINE AYIKA V. REPUBLIC OF LIBERIA ECW/CCJ/JUD/09/12.

68. In determining the existence of a continuing violation in the instant Application, the uncontroverted facts before the Court is that the 2nd to 31st Applicants were allegedly unlawfully detained on the 8th of May 2019 under the *1976 Prohibited Organizations Decree* (NRCD 172), consequent upon which the Applicants allege the violation of their rights under Article 6 of the African Charter. Considering that mere allegation invokes the jurisdiction of the Court, thus the uncontroverted date of arrest and detention alleged by the Applicants is indicative that the alleged violation occurred within the existence of the Court and is continuing to the time of this Application.

69. Consequently, while the law in question predates the existence of the Court, the conduct premised on the Decree alleged to violate the human rights of the within-named Applicants took place within the period the Court already existed. Accordingly, the Court holds that it has jurisdiction to examine the

compliance of *1976 Prohibited Organizations Decree* (NRCD 172) with international laws as prayed by the Applicants.

70. With regards to the determination of the jurisdiction of the Court in respect of the allegation of unlawful detention under the *1976 Prohibited Organizations Decree* (NRCD) 172, the Court recalls its innate jurisdiction under Article 9(4) to provide redress for violation of human rights alleged to be violation occurring in a Member State. Consequently, mere allegation of human rights violation invokes the jurisdiction of the Court. See *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC & ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/12/22 PARA 29. See also *GEORGE S BOLEY V REPUBLIC OF LIBERIA* ECW/CCJ/JUD/24/19 PG. 10.

71. In view of the fact that the allegation of unlawful detention is a human right violation proscribed by Article 6 of the African Charter, the Court holds that this allegation is within its mandate as provided in Article 9(4). Accordingly, the Court affirms its jurisdiction to entertain the said allegation as presented.

VIII. ADMISSIBILITY

72. The criteria for admissibility of applications are set out in Article 10(d) of the 2005 Supplementary Protocol of the Court, which provide that: *"Access to the Court is open to the following: 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."*

73. The summary of this provision requires that the Application must show that the Applicant is a *prima facie* a victim; the application must not be anonymous; and the matter must not be pending before another similar international human rights tribunal.

74. The present application is submitted by both a legal person; the Homeland Study Group Foundation (HSGF), and thirty (30) individual natural

persons. The Court will address the admissibility of the application with respect to each category of Applicants.

a. *Admissibility of the Application by the Homeland Study Group Foundation (HSGF)*

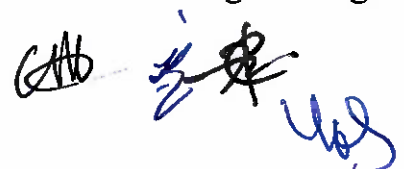
1. *Legal Personality and Standing*

75. The Applicant(s) anticipated under Article 10(d) of the Supplementary Protocol 2005, can either be a direct or indirect victim, natural or legal person. It is imperative that in claims before the Court, parties possess the required *locus standi* to be admitted pursuant to the said Article 10 (d) of the Supplementary Protocol. Therefore, where the Applicant is a legal person, evidence supporting the legal personality of an Applicant is required to enable this Court to determine its status as a victim in a claim. See MRS. HELEN JOSHUA & ANOR. V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/23 PAGE 22 PARA 56.

76. In that regard, evidence establishing the legal personality of the Applicant as having been incorporated or established under the laws of Member States is required to determine capacity. The rational being that “...*taking into account the need to reinforce the access to justice for the protection of human and peoples’ rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State and enjoying observer status before ECOWAS institutions, can file complaints against Human Rights violations in cases that the victim is not just a single individual, but a large group of individuals or even entire communities.*” THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA & 8 ORS RULING NO. ECW/CCJ/RUL/07/10.

77. The Court observes that the 1st Applicant did not annex any documentary evidence establishing its legal status as a duly registered non-governmental organization. In the absence of such proof, particularly a certificate of incorporation, the Court cannot ascertain that the 1st Applicant possesses the legal personality under the applicable law in any of the Member States of ECOWAS.

78. On this premise, the Court has held that the production of a certificate of incorporation is an indispensable requirement in establishing the legal



status of a non-governmental organization. This requirement cannot be waived in the determination of its recognition as a legal entity. See FEDERATION OF AFRICAN JOURNALISTS V THE REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 PG. 16. See also FIDC V REPUBLIC OF LIBERIA 23/18 PG 13. INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/15/24 PARA 109.

79. Consequently, the 1st Applicant is accordingly struck out from the Application.

b. Admissibility of the other individuals Applicants

80. The Court is presented with a list of thirty (30) individual Applicants identified by their full names and locations and some with their contact numbers, this shows that they are not anonymous Applicants. Having been alleged to be victims of human rights violations, including arbitrary arrest and detention, the victim status for admissibility is satisfied. In addition, there is also no indication that the instant Application has been submitted to another similar international human rights body.

81. Accordingly, the Court finds that the 2nd to 31st Applicants, as well as the corresponding reliefs insofar as it concerns the named individuals is admissible and will hereunder be examined.

IX. MERITS

82. The allegations that have successfully invoked the jurisdiction of the Court are:

- i. That the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards.
- ii. That the arrests and detentions based on the 1976 decree constitute arbitrary detention and violate the right to self-determination.

83. In that regard the *allegations will be examined seriatim*.

1. Compatibility of the 1976 Prohibited Organizations Decree with International Human Rights Standards

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84. It will be recalled that while the Applicants claim that the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards, the Respondent objected on the basis that the Court lacks the jurisdiction to examine national laws. It is equally recalled that the said objection was dismissed for non-compliance with the Rules of the Court in that regard.

85. Recall also that the Court suo moto examined the Decree in relation to its predating the existence of the Court, and found it has jurisdiction to determine matters under the said Decree in view of the continuing occurrence of the alleged violation. In that regard, it will proceed to examine the allegation that the 1976 Prohibited Organizations Decree is unlawful and incompatible with international human rights standards.

86. However, the Court will first examine its power to review national laws ahead of making a determination on the compatibility with international human rights norms of the said Decree.

Power to review national law; 1976 Prohibited Organization Decree

87. States by virtue of their sovereignty are empowered to govern themselves without external interference particularly in creating and enforcing law within their territories. Consequently, each Member State has the authority to develop, implement and enforce its own laws according to its constitution and political system.

88. However, when a State signs and ratifies international human right treaties, it takes on legal and moral obligation to uphold the rights and principles therein and align its national laws with the standards set out in the treaties. Consequently, international instruments relating to human rights authorize States to amend, in certain circumstances, rights and freedom they have pledged to guarantee. International bodies like this Honorable Court do acknowledge their right to examine the legitimacy of the legal stance adopted by the States and their proportionality with the aims and objectives of the guaranteed rights. Such monitoring is intended to ensure that states while employing the margin of freedom accorded them to amend rights through the adoption of national laws, do not end up emptying those rights or freedoms of the very essence of their meaning. NATIONAL

89. In consonance with the concept of state sovereignty, the fundamental principle is that the Court affirms that it does not have the power to directly repeal or invalidate national laws but has the authority to review the compatibility of the national laws and practice with international human rights obligation and order compliance. In reiterating this position the Court held thus; "Consequently, this Court underscores the fact that it lacks jurisdiction to examine national laws in abstracto but holds that it has the competence to compel Member States to conform or meet their international and community obligations, and it does so where necessary by examining any impugned national laws with the view to ascertaining whether indeed any human rights violations have occurred." SEE UMEH AND ANOTHER V. FEDERAL REPUBLIC OF NIGERIA (ECW/CCJ/APP/48/18; JUDGMENT NO. ECW/CCJ/JUD/10/20, JULY 1, 2020), See also ADVOCAID LTD VS SIERRA LEONE ECW/CCJ/JUD/33/24 PAGE 27 PARA 80, DEDJO KOMLA SENA V. THE REPUBLIC OF TOGO ECW/CCJ/JUD/26/21. PAGE 29 PARA 101.
90. In light of its established jurisprudence, the Court holds that it lacks jurisdiction, *stricto sensu*, to review or invalidate the domestic laws of Member States. Nevertheless, the Court is competent to assess *in concerto* relevant to the compatibility of such laws with applicable international human rights standards, and it shall now proceed to undertake that analysis.
91. The Applicants having challenged the compatibility of the 1976 Prohibited Organizations Decree with international human rights norms; the Court will now proceed to examine the Decree in that regard.

Compatibility with International Human Rights Norms of the said Decree

92. While it is settled that the Court is not vested with jurisdiction to review the domestic legislation of Member States *in abstracto*, it may, in the context of an alleged human rights violation, examine specific provisions of such legislation to assess their conformity with applicable international obligations. See INCORPORATED TRUSTEES OF EXPRESSION NOW HUMAN RIGHTS INITIATIVE V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/20/25 PAGE 21-24.

93. Such a review, however, must be grounded on clearly identified provisions said to be incompatible with international law. It is incumbent upon the Applicants to particularize the contested sections of the Decree and articulate how such provisions violate specific rights guaranteed under international instruments. A generalized or blanket approach devoid of precision is insufficient.
94. Thus in its very recent decision on an application to review certain national laws of Kano State in Nigeria, the Court did not merely assess the legality of the Kano State Sharia Penal Code Law, 2000 and the Penal Code of Kano in abstract terms. Rather, it engaged in a detailed examination of the specific provisions of sections 382(b) of the Sharia Code and 210 of the Penal Code of Kano State of Nigeria, alleged by the Applicant to be incompatible with international human rights standards before reaching its determination. See THE INCORPORATED TRUSTEES OF EXPRESSION NOW HUMAN RIGHTS INITIATIVE V. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/20/25 PAGE 21-24.
95. In the instant case, the Applicants have failed to identify the specific provisions of the 1976 Prohibited Organizations Decree alleged to be incompatible with international human rights law to enable the Court contextualise its examination. For emphasis, the Court will not undertake the review of a national law *in abstracto*.
96. In the absence of such particularization, the Court declines to entertain the claim in so far as it relates to the review of the Decree. Accordingly, the Court dismisses the relief to declare the 1976 Prohibited Organizations Decree incompatible with international law and a fortiori the review.
- ii. *A declaration that the arrests and detentions based on the 1976 decree constitute arbitrary detention and violate the right to self-determination.*
97. In relation to this allegation, the Court observes that the Applicants have merged two distinct claims each alleging a separate violation of human rights into a single relief. While it is clear that both claims fall within the ambit of human rights violations over which the Court has jurisdiction, they pertain to separate and independent rights provided in the African Charter.



98. Accordingly, evidence adduced in support of one cannot be relied upon to establish the other. In other words, the evidentiary threshold required to prove unlawful detention is not interchangeable with that necessary to establish a violation of the right to self-determination.

99. Despite the Applicants' oversight in this regard, the Court, having assumed jurisdiction over the relief as framed, is duty-bound to disaggregate and assess each claim independently to ensure a fair and just adjudication.

*1. On the Allegations of Arbitrary Detention
Applicants' Submission*

100. The Applicants allege that individuals from Western Togoland were routinely arrested or forced into hiding simply for participating in peaceful meetings advocating for the right to self-determination. Additionally, members of the (HSGF) were arrested in the course of exercising their rights to freedom of expression and association, as guaranteed under Article 19 of the UDHR which provides that "*No one shall be subjected to arbitrary arrest, detention or exile.*"

101. The Applicants submit that detention is deemed arbitrary where it lacks legal basis. They recall that the Court has held that arbitrary detention encompasses situations where detention occurs in violation of national or international law, without legitimate or reasonable grounds. Moreover, the Court has underscored that deprivations of liberty must be expressly provided for by law and must occur within the framework of judicial proceedings, ensuring the arrested person is brought promptly before a competent Court.

102. The Applicants recount several specific cases of arrest and detention in respect of Applicants listed in exhibit 12 as follows:

- i. George Nyakpo: was arrested on 14 July 2021 while visiting a friend and allegedly brutalized by BNI agents and detained for 56 days before being charged. He was later re-arrested and detained again without justification until his release on 17 December 2021.
- ii. Edem Nukornu: Arrested without a warrant on 23 November 2020, denied access to counsel and family.

- iii. Kwame Tornyeviadi: Arrested on 15 November 2020, held incommunicado, allegedly tortured, and denied medical care and legal assistance.
- iv. Johashaphat Tsogbe: Arrested on 26 December 2019, claims he was violently handled, kept in deplorable conditions, and hospitalized while handcuffed.
- v. Euphemia Gborgbortsi: Arrested at midnight without a warrant on 19 November 2019; she was denied legal assistance for two weeks and detained for six months.
- vi. Nathaniel Acolatse: Arrested on 29 September 2020 allegedly for donating to the HSGF, detained for over a year without contact with his family.
- vii. Ibrahim Tofa: Detained for six months under poor conditions, along with over 100 people in overcrowded cells.
- viii. Agbenyega Akudzi: Detained twice, first for 64 days and then in inhumane conditions in November 2019.
- ix. Peter Godsfriend: Arrested on 18 November 2019 and held for six months without due process.

103. They challenge the government's characterization of their actions as treasonous or threatening to national security, insisting that their activities were lawful and peaceful.

104. They equally argue that the absence of evidence supporting the government's claims indicates an abuse of power. They cite the 2022 decision of the UN Working Group on Arbitrary Detention (WGAD), which found the arrest of George Nyakpo to be arbitrary and lacking legal justification. Despite this finding, the Respondent did not respond to the WGAD's conclusions or recommendations to align its laws and practices with international standards. (Exhibit 12).

105. The Applicants maintain that no formal charges or trials have taken place in respect of most of the detainees, depriving them of the opportunity to defend themselves. They insist that there has been no conviction or even a formal complaint filed against the HSGF or its members. (Exhibit 11). They cited the Court's position that any arrest without legitimate or reasonable grounds is arbitrary and violates the African Charter on Human and Peoples' Rights (ACHPR). They further allege that the methods used during the arrests were violent, degrading, and inhumane.

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106. In response to the claim that HSGF failed to engage the government through appropriate channels, the Applicants submit evidence of repeated peace overtures and dialogue initiatives dating back to 2015. They assert that the change in regime in 2017 marked a shift from peaceful engagement to violent repression. (Exhibit 13).

107. The Applicants conclude that their detention was arbitrary, lacking legal basis and unaccompanied by fair trial guarantees, in violation of regional and international human rights standards.

Respondent's Submissions

108. The Respondent, Republic of Ghana argues that the arrests and detentions were lawful and consistent with the 1992 Constitution and the Prohibited Organizations Decree of 1976 (SMCD 20). They argue that Article 21(1) (e) of the Constitution guarantees freedom of association but maintain that this right does not extend to organizations promoting secession.

109. The Respondent contends that HSGF falls within the category of prohibited organizations under SMCD 20, which bans groups advocating the secession of any part of Ghana. As HSGF's objectives include the creation of an independent Western Togoland, it is therefore an illegal organization under Ghanaian law.

110. It further states that the activities of the Applicants amount to criminal offences, including high treason and breach of peace, punishable under sections 182 and 207 of the Criminal Offences Act 1960. The Respondent asserts that Applicants' actions, such as forming militias and allegedly attempting to alter Ghana's borders, pose a threat to national sovereignty and public order.

111. Respondent further submits that the Applicants organized provocative events, including roadblocks and identity checks for travelers, thereby endangering public safety and violating national laws. It argues that any harm suffered by the Applicants resulted from their unlawful actions and that the arrests were carried out by competent authorities under lawful investigation procedure. (Exhibit AG1).

- i. George Nyakpo: foi preso em 14 de julho de 2021 quando visitava um amigo e alegadamente brutalizado por agentes do BNI, tendo sido detido durante 56 dias antes de ser acusado. Mais tarde, foi novamente preso e detido sem justificação até à sua libertação em 17 de dezembro de 2021.
- ii. Edem Nukornu: Preso sem mandado em 23 de novembro de 2020, sem acesso a advogado e família.
- iii. Kwame Tornyeviadzi: Preso em 15 de novembro de 2020, mantido incomunicável, alegadamente torturado e privado de cuidados médicos e assistência jurídica.
- iv. Johashaphat Tsogbe: Preso em 26 de dezembro de 2019, alega ter sido manipulado violentamente, mantido em condições deploráveis e hospitalizado enquanto estava algemado.
- v. Euphemia Gborgbortsi: Presa à meia-noite sem mandado em 19 de novembro de 2019; foi-lhe negada assistência jurídica durante duas semanas e detida durante seis meses.
- vi. Nathaniel Acolatse: Preso em 29 de setembro de 2020 alegadamente por ter feito um donativo à HSGF, detido há mais de um ano sem contacto com a sua família.
- vii. Ibrahim Tofa: Detido durante seis meses em condições precárias, juntamente com mais de 100 pessoas em celas sobrelotadas.
- viii. Agbenyega Akudzi: Detido duas vezes, primeiro durante 64 dias e depois em condições desumanas em novembro de 2019.
- ix. Peter Godsfriend: Preso em 18 de novembro de 2019 e detido durante seis meses sem processo equitativo

103. Contestam a caracterização pelo governo das suas ações como traiçoeiras ou ameaçadoras da segurança nacional, insistindo que as suas atividades eram legais e pacíficas.

104. Argumentam igualmente que a ausência de provas que sustentem as alegações do governo indica um abuso de poder. Citam a decisão de 2022 do Grupo de Trabalho das Nações Unidas sobre Detenção Arbitrária (WGAD), que considerou a detenção de George Nyakpo arbitrária e sem justificação legal. Apesar desta conclusão, a Demandada não respondeu às conclusões ou recomendações do WGAD para alinhar as suas leis e práticas com as normas internacionais. (Prova 12).

105. Os Demandantes sustentam que não foram apresentadas acusações formais ou julgamentos para a maioria dos detidos, privando-os da

118. It is a general consensus in international law that the respect for legal channels in cases of arrest and detention presuppose that the denial of freedom must have a legal basis in the domestic law of the State. MARTIN GEGENHEIMER & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/21 PAGE 23 PARA 84.
119. It must however be stated that an arrest and detention that may have been lawful at the outset can subsequently become unlawful if it fails to meet the procedural and substantive standards established by law. This includes instances where the nature of the arrest or the continued detention of the individual exceeds the legally prescribed time limits or lacks the requisite judicial backing. It follows therefore that the powers of detention must not only be provided by law, but also, the grounds of their existence must be reasonable. See MARTIN GEGENHEIMER & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA SUPRA PAGE 28 PARA 103. See also KODJO ALAIN VICTOR CLAUDE V REPUBLIC OF COTE D'IVOIRE ECW/CCJ/JUD/09/21 PARA 53.
120. In the present case, the Applicants contend that their arrest and detention was arbitrary, lacking any valid legal basis and unaccompanied by the guarantees of a fair trial, thereby violating both regional and international human rights standards.
121. The Court notes that the 1976 Prohibited Organizations Decree, under which the alleged detentions were effected, was enacted to provide for the prohibition of certain organizations and related matters. Section 1 of the Decree expressly proscribes and declares unlawful the following:
- "a. The organization known as the Togoland Liberation Movement "T.L.M" or "T.O.L.I.M.O", and the National Liberation Movement of Western Togoland "N.L.M.W.T.L";*
- b. Any other organization, irrespective of its designation, whose objectives include advocating or promoting secession from the Republic of Ghana of the former British Mandated Territory of Togoland, or any part thereof, or seeking its integration with a foreign territory.*
- Section 2(1) of the Decree outlines the offences under the law, while subsection 2 provides that:*

“A person who contravenes a provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.”

122. In that regard, and in view of the aforementioned legal provisions, the Court concludes that the Applicants’ arrest and detention had a legal basis.

Requirement of a Legitimate Purpose

123. Having established that the arrest and detention of the Applicants had a legal basis, the Court must now proceed to examine whether the derogation serves a legitimate purpose. The Court notes the undisputed fact that the Applicants were arrested and detained in connection with a demonstration during which they proclaimed the independence of “Western Togoland”.

124. For a detention to be deemed as serving a legitimate purpose, it must be demonstrated that such detention was directed at achieving one or more of the recognised lawful objectives, such as the prevention of the commission of an offence, the maintenance of public order and national security, or the securing of an individual’s attendance before a competent judicial authority.

125. In the instant case, the Court notes the submissions of the Respondent to the effect that the Applicants, identified as members of a secessionist movement, have since 2017 actively promoted the group’s cause through a series of unlawful activities, notwithstanding repeated warnings issued by the Ghanaian authorities. The Respondent further avers that investigations conducted by the Ghana Police Service and the National Intelligence Bureau established that the Applicants were engaged in the recruitment of youths into a militia group, an effort allegedly propagated via radio broadcasts and public lectures to advance their separatist agenda.

126. According to the Respondent, the overarching objective of these actions was to unlawfully usurp executive authority by seeking to alter the territorial integrity of the State and exercise political control over parts

thereof. Such conduct, they contend, constitutes the offence of treasonable felony as defined under Section 182 of the Criminal Offences Act, 1960 (Act 29) of Ghana.

127. The Court has consistently affirmed that even when the interference is in accordance with the law it must in addition be necessary in a democratic society for any of the following purposes: public safety, economic well-being of the country, protection of health and morality and the prevention of disorder or crime. The nature of the democratic necessity is such that mere expediency is not sufficient. The interference must be justified by a "pressing Social need ' relating to one or more of the legitimate aims above. See KODJO ALAIN VICTOR CLAUDE V REPUBLIC OF COTE D'IVOIRE ECW/CCJ/JUD/ 09/21 PAGE 24 PARA 67.

128. The Court is of the view that the allegations as presented if substantiated are sufficiently serious to justify the arrest and detention of the Applicants. Secession, in the eyes of the law, constitutes a grave offence which, by its very nature, poses a direct threat to national security and public order. As such, it engages a pressing social need that warrants State intervention through lawful arrest and detention measures.

129. In view of the foregoing, the Court finds that the detention of the Applicants was founded on allegations which falls within the realm of legitimate aims recognised under international and domestic law. Accordingly, the Court holds that the detention served a legitimate purpose.

Detention within the Prescribed Time Limit

130. Recourse is made to the fundamental principle underlying Article 6 of the African Charter on the compliance of arrest and detention with the law. In other words, all indices of detention including the safeguards must be carried out strictly in accordance with a prescribed legal framework. This is evident in the proviso of the said Article 6.

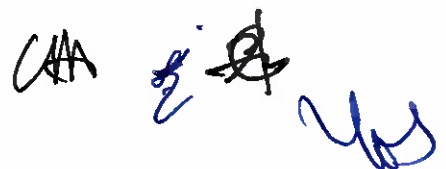
131. In that regard, Section 14(3) of the Constitution of Ghana 1992 provides that: "*A person who is arrested, restricted or detained— (a) for the purpose of bringing him before a Court in execution of an order of a court; or (b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is*

not released, shall be brought before a Court within forty-eight hours after the arrest, restriction or detention."

132. It is settled law that the Constitution is the grundnorm of the legal system, and by implication, all domestic legislation and state conduct must conform to its provisions, as well as to the State's binding international human rights obligations.
133. The facts before the Court reveal that the Applicants were arrested in connection with allegations of treason under the Prohibited Organizations Decree of 1976. Notwithstanding the legality or continued existence of this law, the constitutional safeguard under Section 14(3) mandates that any person so arrested and not released must be brought before a Court within forty-eight (48) hours of arrest, restriction, or detention.
134. The Applicants allege that their detention was arbitrary and occasioned solely on grounds of membership in the Homeland Study Group Foundation (HGSF) and their advocacy for the independence of British Togoland. They further contend that they were held in detention well beyond the constitutionally prescribed timeframe without being formally charged or brought before a competent judicial authority.
135. Although the Respondent maintains that the Applicants were detained pursuant to an extant legal provision i.e. the 1976 Decree, that assertion does not derogate from the mandatory constitutional requirement regarding the time limit within which an arrested person must be brought before a Court. Compliance with this requirement is imperative, and failure to do so constitutes a violation of both national and international standards prohibiting arbitrary deprivation of liberty.
136. This Court has consistently held that deprivation of liberty is considered arbitrary where it lacks legal basis, exceeds permissible time limits, or is carried out in a manner inconsistent with due process guarantees. See IBRAHIMA SORY TOURE AND ISSIAKA BANGOURA V. REPUBLIC OF GUINEA (CCJE-LAW REPORT 2016, PARA 70, PAGE 45), ECW/CCJ/JUD/03/16. See also MR. KHALIFA ABABACAR SALL & 5 ORS V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/17/18 PAGE 47.



137. Similarly, the Court held that a detention which, although lawful at its inception, becomes unduly prolonged without justification, transforms into an abusive and unlawful deprivation of liberty. See *BODJONA AKOUSSOULELOU PASCAL v. THE REPUBLIC OF TOGO* ECW/CCJ/JUD/06/15, pg.12.
138. From the material placed before the Court, the Court notes that out of the 31 named Applicants in the initiating application only 9 as per Exhibit 12 are alleged to be arbitrarily detained from periods ranging between 2019 to 2022 and still remain in custody of the Respondent, without being charged to a Court of competent jurisdiction. It is noteworthy that the Respondent did not deny the facts of these detentions, rather they justified same as being lawful to prevent a disorder of the society. They however failed to adduce credible and sufficient evidence to show the length of detention to demonstrate that the Applicants were not subjected to undue or prolonged detention, a necessary burden to be discharged.
139. It is a well-established principle that the burden of proof lies on the party asserting a fact. Nonetheless, where the relevant facts fall within the peculiar knowledge of the opposing party, as in the present instance, the burden shifts accordingly. See *MOUNGONGA SATURNIN & ANOR V. REPUBLIC OF TOGO* ECW/CCJ/JUD/32/19 PAGE 16. See also *MR. GODSWILL TOMMY UDOH V FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/26/16 PAGE 17.
140. The Respondent being the custodian of these individual Applicants have the records of the detention of each one of them and are therefore in a better position to produce them as evidence to support their compliance with law.
141. The only evidence placed before the Court is a charge sheet (EXH AG 1) reflecting that only the 2nd, 5th, 9th, 11th, and 16th Applicants were arraigned before the Circuit Court. Notably, the Respondent is silent on the specific periods of their detentions before arraignment, as well as the status of all other Applicants thereby failing to discharge the evidentiary burden placed upon it.



142. As earlier stated, the Respondent did not deny the allegations of detention of the Applicants. The Court is consistent in stating that a Respondent must take a definite position on all the facts alleged, accepting or contradicting them, otherwise the Court will be allowed to presume as true the facts on which it has remained silent, whenever it is possible to draw consistent conclusions about them from the existing evidence. See *MRS. AFANVI AKUYO V THE TOGOLESE REPUBLIC* ECW/CCJ/29/22 PARA. 98, PAGE. 25. See also *AIRCRAFT WOMAN BEAUTY IGBOBIE UZEZI V FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/11/21 PAGE. 128.
143. Thus, the Respondent had the burden to adduce clear and cogent evidence showing that each Applicant was detained in compliance with the applicable legal timeframe, including the precise date and duration of each detention.
144. In the absence of specific denial and acceptable justification the Court finds that the detention of the Applicants exceeded the constitutionally and legally prescribed time limits.
145. Accordingly, the Court holds that the right to liberty of 1st-9th Applicants in exhibit 12 was violated by the Respondent contrary to Article 6 of the African Charter.

On Alleged Violation of the Right to Self-Determination

Applicants' Submissions

146. The Applicants allege that the Respondent violated their right to self-determination by arbitrarily arresting and detaining members of their community.
147. In support of their claim, the Applicants argue that the Respondent is a party to several international instruments which affirm the right to self-determination. These include the United Nations General Assembly Resolution 1514 (XV) of 14 December 1960; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and Peoples' Rights (ACHPR); and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

148. Relying on the jurisprudence of the International Court of Justice (ICJ), including its judgment in the *East Timor* case (ICJ Reports 1995), the Applicants assert that the right to self-determination constitutes "*one of the essential principles of contemporary international law.*" They also cite the *Namibia* advisory opinion (ICJ Reports 1971, para. 52), to underscore that this right is applicable even to non-self-governing territories.

149. Referring to the Preamble of the 1992 Constitution of Ghana, which commits to ensuring "*the protection and preservation of fundamental human rights and freedoms,*" the Applicants argue that the Respondent has a constitutional obligation to respect the right to self-determination.

150. They invoke several provisions of international human rights law in support of their position. Notably:

- i. Article 1 of the ICCPR, which affirms the right of all peoples to self-determination;
- ii. Article 1(3) of the same Covenant, which obliges States Parties to promote and respect that right;
- iii. Articles 19 and 20 of the ACHPR, which enshrine the equality of peoples and their right to resist domination;
- iv. Articles 19 and 21 of the Universal Declaration of Human Rights (UDHR), which provide for freedom of opinion and the right to participate in government.

151. The Applicants contend that the Volta, Oti, and parts of the Northern Regions of Ghana, formerly British Togoland, were placed under British trusteeship following the United Nations General Assembly Resolution of 13 December 1946. They argue that, historically and legally, these territories retained a distinct identity but were integrated into the Gold Coast colony in violation of their self-determination rights.

152. They submit that the 1976 Prohibited Organizations Decree, which criminalizes activities advocating for self-determination in the Volta Region (Western Togoland), underscores the continued suppression of the people's rights. According to them, this Decree has led to acts of

discrimination, marginalization, and violence against residents of these regions.

153. To support these claims, the Applicants provided various exhibits. Exhibit 2 includes video footage allegedly showing mass evictions and the destruction of property in the Bui community by authorities. Exhibit 3 features scenes from the 2020 voter registration exercise, where residents were reportedly denied registration on the basis that they were not considered Ghanaians. The Applicants also refer to an audio recording attributed to a public figure, Mr. Kwame Baffoe (alias Abronye DC), allegedly inciting hatred against the people of Togoland.

154. They further argue that the withdrawal of airtime from the HSGF on Volta Star Radio—a subsidiary of the Ghana Broadcasting Corporation—amounts to a suppression of freedom of expression and access to information for residents in the affected regions.

155. It is their conclusion that all these actions justify their struggle for self-determination.

i. Respondent's Submissions

156. The Respondent argues that British Togoland ceased to be a separate entity following the 1956 UN-supervised plebiscite in which approximately 58% of voters opted to integrate with the Gold Coast. The UN Trusteeship Council accepted this decision and became part of the basis for Ghana's independence in 1957.

157. Respondent further argues that Articles 19 and 20 of the ACHPR refer to colonized or oppressed peoples and do not apply in this context. It maintains that the people of the Volta Region are not colonized, oppressed, or denied civil and political rights, and that Ghana is a democratic state composed of a unified people.

158. The Respondent further submits that the Applicants are members of the secessionist group and have since 2017, championed the group's cause

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by engaging in a series of nefarious activities despite several warnings by the Ghanaian authorities.

159. The Respondent submits that investigations by the Ghana Police Service and the National Intelligence Bureau revealed that the Applicants had been engaging in recruitment activities, targeting youth to form a militia group. This campaign according to the Respondent had been achieved through radio programs and public lectures aimed at assisting in carrying out its secession agenda.

160. They conclude that the activities of the Applicants are not only a violation of its national laws, but a gross usurpation of the powers of the Executive, as they seek to unlawfully alter the boundaries of the Respondent State and exercise political authority over part of its territories. This they submit are acts of treasonable felony under Section 182 of the Criminal Offences Act, 1960 (Act 29) of Ghana.

161. They therefore urged the court to dismiss the Applicants allegation of the violation of the right to self –determination.

Analysis of the Court

162. The right to self-determination is a fundamental principle of international law and is enshrined in both Article 20 and 21 of the ACHPR which provides that:

Article 20

“1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States

parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.”

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

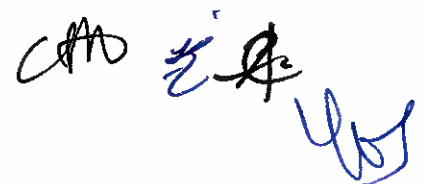
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”

163. This right is recognized as *jus cogens*, denoting its peremptory and non-derogable nature, it guarantees all peoples the freedom to determine their political status and pursue economic, social, and cultural development according to their freely expressed will. For colonised or oppressed peoples, it includes the right to liberation by lawful international means.

164. It is important to state that not all rights guaranteed by the African Charter envisage individuals as potential victims to access the Court. From the full title- African Charter on Human and Peoples’ Rights, the Charter envisages in addition to individual rights, the protection and enforcement of collective rights for the benefit of “peoples” and enforceable by “peoples”. See *RISQAT BADMUS V FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/ 04/23 PAGE. 13 PARA 40.



165. Consequently, the exercise of the right to self-determination presupposes the existence of a “people” with a distinct identity, living in a defined territory, and subjected to domination or oppression.
166. In determining an allegation of violation of the right to self-determination, it is imperative to examine the capacity of the parties alleging the violation to enable a consideration of the people-centric quality of the right
167. The Applicants’ claim in this regard is that the HSGF was founded in 1994 to promote the right to self-determination through peaceful means, including dialogue, protests, historical education, and symbolic acts, formerly British Togoland. They allege that despite its non-violent nature, the Ghanaian authorities have consistently targeted HSGF members, labelling their activities as offensive and treasonous, and subjecting them to repeated arrests.
168. Furthermore, the HSGF was formed for the restoration of British Togoland’s sovereignty currently the “Western Togoland,” which was annexed to Ghana following the plebiscite of 1957. The communities in question are from Ghana’s Volta region, Tongu Volta, Oti, and parts of northern Ghana (collectively referred to as “Western Togoland”).
169. The understanding of the Court is that HSGF is the umbrella under which these communities express their voices and is the legal organization representing the people of these communities in their quest for self-determination. In that regard, the members of these communities are historically connected with a distinct identity, living in a defined territory, and allegedly subjected to domination or oppression.
170. In matters of self-determination, the Court, has consistently drawn from authoritative sources including dictionary definitions, prior case law, expert reports, and the Preamble to the African Charter, all of which converge to affirm that the term ‘peoples’ denotes collective right holders of shared communal interests. These interests are recognized and guaranteed by the Charter as enforceable rights under international human rights law. See *RISQAT BADMUS V FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/ 04/23 PAGE 17- 20.

171. Without going into the merit of the Applicants' allegation of the violation of their right to self-determination, the first issue that must be determined is the capacity of the party that can initiate the application for the right to self-determination. Considering the communal nature of the right to self-determination, a representative action is the appropriate and indeed the most practicable option in seeking relief for violation of this right.
172. Representative actions are universally recognised and the Court in a plethora of cases has maintained that the holder of a recognised right can delegate their power to act to a third party under certain conditions. Bringing an action before a Court of law is a vested power, and it is up to the holder of that prerogative, either to execute it himself, or to entrust that power to a third party within the limits permitted by the national laws. BAKARY SARRE & 28 ORS V. REPUBLIC OF MALI ECW/CCJ/JUD/03/11 PAGE. 15-16.
173. According to the Applicants, the HSGF was founded in 1994 to promote the right to self-determination of the communities from Ghana's Volta region, Tongu Volta, Oti, and parts of northern Ghana (collectively referred to as "Western Togoland"). For this reason, it was designated as the 1st Applicant in the initiating application.
174. The law is also trite that, broadly, there are two (2) classes of persons who possess the legal capacity to sue or be sued in a legal action before the courts, as follows:- (a) Natural and living persons, or (b) artificial persons with juristic personality.
175. HSGF not being a natural but a juristic person classified as a non-governmental organisation. (NGO) is prima facie able to institute this action representing the affected communities. This is based on the Court's jurisprudence affirming that *"Non- governmental organisations (NGOs) and public spirited individuals can institute actions on behalf group of victims from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and financial capacity to maintain legal action of such magnitude which affects the rights of many people, as Public interest issues are generally for the welfare and well-being of every*

individual in a society.” THE REGISTERED TRUSTEES OF JAMA’A FOUNDATION & 5 ORS v. FEDERAL REPUBLIC OF NIGERIA & 1 ECW/CCJ/JUD/04/20 PAGE 14.

176. However, HSGF is required to possess the relevant qualification to bring a representative action. Fundamentally, being a legal person, it must submit a certificate evidencing its registration as an NGO in accordance with the law. In the words of the Court: “...*taking into account the need to reinforce the access to justice for the protection of human and peoples’ rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State and enjoying observer status before ECOWAS institutions, can file complaints against Human Rights violations in cases that the victim is not just a single individual, but a large group of individuals or even entire communities.*” THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA & 8 ORS (2010) CCJELR AT PAGE 231, PARA. 6.

177. Therefore representation by NGOs for human rights violations should be carried out by organisations that have satisfied the law and have been granted legal personality from a Member State.

178. It should be recalled that the HSGF was already dismissed for lack of standing having failed to establish its registration as a legal person. It follows therefore that HSGF does not have the capacity to represent the aggrieved community in their action on self – determination. Considering that the affected communities are a communal group as “peoples” who must be represented in their quest for self-determination and considering further that the representing organization lacks capacity to do so, the determination of the allegation by the 1st Applicant (HSGF) of the violation of the right to self –determination becomes untenable therefore devoid of purpose.

179. With regards to the 1st to 9th Applicants who are individuals, the Court notes that they are not implicated in the right to self-determination as the only allegation relevant to them is their unlawful detention which the Court has already pronounced upon.

180. Accordingly, the Court holds that allegation of the violation of the right to self-determination is not proper before the Court and is accordingly dismissed.

X. ON REPARATION

181. Reparation for the violation of human rights may be made inter alia, by restitution, by returning the victim to the situation he or she was in before the violation of the law occurred, or by compensation to be awarded for each economic loss, as appropriate and proportionate to the gravity of the violation and the circumstances of each individual case resulting from the violation of international human rights law. See *OLUWATIMILEHIN ADEBAYO V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/44/24 PARA. 103*. See also NO. VII AND IX S. 19 AND 20 OF THE BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW.
182. Having found a violation on account of the unlawful detention of the Applicants by the Respondent, the Court must consider the appropriate reparations the Respondent must make to remedy the violation. The purpose of reparation, as consistently emphasized, is to acknowledge the harm suffered and to afford adequate redress to victims.
183. The Applicants have collectively requested the sum of USD 125,000 for each of the arbitrarily detained persons, for the material, moral, and physical harm. The Court, however, considers the amount excessive and in the circumstances of this case, the Court considers it fair and just to award the sum of the equivalent of \$2,500 in the local currency to each of the 1st to 9th Applicants as just and equitable reparation for the unlawful detention suffered.
184. The Court grants other reliefs sought by the Applicants only to the extent indicated in the operative clause of this judgment.

XII. COSTS

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

186. The Court notes that none of the parties made submissions regarding costs. In light of the provisions of Article 66 (11) of the Rules, which provides, "*if costs are not claimed, the parties shall bear their own costs...*" The Court therefore orders all parties to bear their costs.

XIII. OPERATIVE CLAUSE

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

As to jurisdiction

i. Declares that it has jurisdiction to hear the application only as it relates to the allegation of unlawful detention and the violation of the right to self-determination.

As to Admissibility.

ii. Finds the claim in respect to the 1st Applicant inadmissible.
iii. Finds the claim in respect to the 1st-9th Applicants admissible.

As to the Merits

iv. Finds that the detention of the 1st-9th Applicants is arbitrary;
v. Dismisses the claim of the Applicants on the violation of their rights to self-determination.

Order

vi. Orders the Respondent to prosecute the 1st-9th Applicants in detention within 2 weeks from this judgment, failure for which the Applicants are order to be released.
vii. Decides that all other reliefs sought by the parties which have not been herein granted in whole or in part are hereby dismissed.

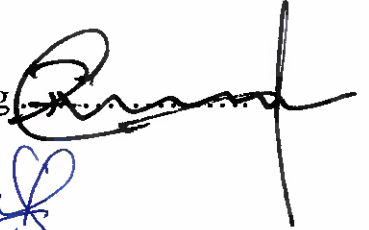
As to reparation.

viii. Awards the sum of the equivalent of \$2,500 in the local currency to each of the Applicants for their unlawful detention by the Respondent

As to costs

ix. Orders the Parties to bear their own costs.

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES -Presiding



Hon. Justice Sengu Mohamed Koroma - Member



Hon. Justice Dupe Atoki - Member/Judge Rapporteur



Dr. Yaouza OURO-SAMA - Chief Registrar



Done in Lagos, this 16th Day of May 2025 in English and translated into French and Portuguese.

