

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



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

In the Matter of

MOHAMED MORLU

(APPLICANT)

v

REPUBLIC OF SIERRA LEONE

(RESPONDENT)

App No. ECW/CCJ/APP/37/22; Judgment No. ECW/CCJ/JUD/04/24

JUDGMENT

ABUJA

28 FEBRUARY 2024

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

App No. ECW/CCJ/APP/37/22; Judgment No. ECW/CCJ/JUD/04/24

MOHAMED MORLU -APPLICANTS
AND
REPUBLIC OF SIERRA LEONE -RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE - Presiding/ Judge Rapporteur
Hon. Justice Gberi-Be OUATTARA - Member
Hon. Justice Sengu Mohammed KOROMA - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

Oludayo Fagbemi
Edmund Foley
Eleanor Thompson - Counsel for APPLICANT

Soniade Barlatt -Counsel for RESPONDENT



I. JUDGMENT

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

II. DESCRIPTION OF THE PARTIES

2. Applicant, Mr Mohamed Morlu, is a citizen of Sierra Leone resident in Freetown.
3. Respondent, the Republic of Sierra Leone, is an ECOWAS member state.

III. INTRODUCTION

Subject Matter of the Proceedings

4. The case concerns an allegation by the Applicant that, while he and other students of Njala University in Bo City, Sierra Leone, were undertaking a peaceful protest, unidentified officers of the Operation Support Division (OSD) of the Sierra Leone Police Force shot and injured him, along with other protesting students. The Applicant has brought the present action for the violation of his right to security of the person, freedom from torture, and the right to an effective remedy under the African Charter on Human and Peoples' Rights 1981 (African Charter), the International Covenant on Civil and Political Rights 1966 (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1979 (CAT).

IV. PROCEDURE BEFORE THE COURT

5. Applicant commenced these proceedings by an Initiating Application dated 8 August 2022 and filed at the Registry of the Court on 12 August 2022. The Application was electronically served on the Respondent the same day, 12 August 2022.
6. Following the failure of the Respondent to file a defence within the required time period, Applicant filed a motion for default judgment on 20 March 2023 which was electronically served on the Respondent the same day.
7. On 28 September 2023, the Respondent filed a motion on notice requesting extension of time to file its defence together with Respondent's Arguments of Facts and Law dated 26 September 2023. Both processes were electronically served on Applicant on 28 September 2023.
8. At a hearing of the case later in the day on 28 September 2023, Applicant confirmed that he had received Respondent's documents about 45 minutes before the hearing, but nevertheless urged the Court to proceed with the hearing. Respondent moved its motion for extension of time to file its defence which Applicant did not oppose. The Court granted Respondents request and deemed the processes as duly filed. It then heard submissions of the parties on the merits of the case and adjourned for deliberation and judgment.



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V. THE CASE OF THE APPLICANT

A. Summary of Facts

9. Applicant says that in November 2016, he was a student at Njala University, Bo City, in the Southern Province of Sierra Leone. Lecturers at the University went on strike for about four months disrupting studies and leaving students frustrated especially since they had paid tuition and accommodation fees for that academic session.
10. In February 2017, the students including the Applicant embarked on a peaceful protest. They made a procession from the campus of the University to the Office of the Bo Provincial Secretary, the Office of the Anti-Corruption Commission, the Bo West Police Station, the Office of the Ombudsman and, eventually, to the Ministry of Education offices in Bo to meet with the Deputy Director of Education.
11. After two weeks had passed and nothing had been heard from the Deputy Director of Education about the students' concerns, they embarked upon a second protest. The second protest march in which the Applicant again participated was along the same route as the previous one. Another meeting was held with the Deputy Director of Education who promised to resolve their problem soon.
12. When this did not happen, a third protest march was organised on 23 March 2017. Applicant says that he and other students numbering

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about one thousand went on the procession along the same routes as the previous ones with police officers present to protect the students and ensure a peaceful protest. Students blocked the roads leading into Bo from Freetown and Kenema and stopped traffic coming into the town.

13. Applicant says that while en route to the Ministry of Education office, the students encountered a police roadblock between the Anti-Corruption Commission and the Bo West Police Station mounted by officers from the Operations Support Division (OSD) of the Sierra Leone Police. The fully armed OSD officers tried to stop the procession, but the students ran past the roadblock and marched to the Ministry of Education to press home their demands.

14. While engaging with the staff of the Ministry of Education, two pick-up trucks filled with fully armed OSD officers were seen approaching them led by Mohamed Turay, alias Yete Yete, the Southern Regional Commander of the OSD. Some journalists who had been covering the protest approached the police vehicles to talk to the officers, but they were promptly arrested along with a few other students.

15. This prompted the protesting students to start hurling stones at the police officers in an attempt to prevent arrest of their colleagues and the journalists. During the standoff, Applicant says that he heard Commanding Officer Mohamed Turay instruct his men to shoot, without first giving any orders or warnings to the protesting students to disperse or retreat. At his order, the officers started firing at the

students prompting the Applicant and others to run when they heard the gunshots.

16. After fleeing the scene of the gunshots to about 400 meters away, Applicant who was then in the company of a female classmate, realised that he had been shot in his upper abdomen. He became unconscious and was rushed to the Bo Government Hospital where he spent 21 days on admission. When he regained consciousness in the course of his admission, doctors informed him that he had undergone surgery. However, upon his discharge, he was not given any medical certificate.

17. Applicant says that following his discharge from Bo Government Hospital, he suffered a series of medical complications including acute abdominal and chest pains for which he did CT scans at about three hospitals in Freetown. The scans confirmed that the bullet with which he was shot was still lodged in his upper abdomen.

18. According to Applicant, he also received medical attention at the National Cardiothoracic Centre at the Korle-Bu Teaching Hospital in Accra, Ghana. The doctors there advised him not to undergo surgery to remove the bullet at the time, as it was likely to cause him more harm than good if the surgery was done then. For the next two to three years after he was shot, Applicant says that he also suffered psychological trauma complications, but never received any psycho-social support from the Government of Sierra Leone.

19. The shooting incident was reported to Sierra Leone's Independent Police Complaints Board (IPCB), an independent oversight mechanism charged with receiving and investigating complaints from the public about the police. The IPCB investigated the incident and found that the police used excessive and needless force to quell the protest, and that in the absence of such force, no injuries or deaths would have been recorded. In its Report dated 20 February 2018, the IPCB recommended that the matter be forwarded to the Director of Public Prosecutions (DPP) for legal advice with the view to prosecuting the suspects. However, to date, the DPP has not issued any legal advice on the matter, nor has any effective investigation been conducted to identify and hold accountable the officers responsible for the unlawful shooting.

B. Pleas in Law

20. Regarding his pleas in law, Applicant contends as follows:

- (i) That the failure of the Respondent to investigate and prosecute the perpetrators of the violence he suffered as well as the failure to compensate him are violations of his right to a remedy and access to justice.
- (ii) That the Respondent is responsible for the violation of his right to security of the human person.
- (iii) That the Respondent is responsible for violation of his right to be free from torture.

C. Reliefs Sought

21. Applicant requests the Court for the following reliefs:

- (i) A declaration that the Republic of Sierra Leone has violated the right of Mohamed Morlu to a remedy and access to justice as provided for in articles 1 and 7 of the African Charter on Human and Peoples' Rights; article 2(3)(a) of the ICCPR; and articles 4, 5, 12, 13 and 14 of the [Convention against Torture].
- (ii) A declaration that the Republic of Sierra Leone has violated the right of Mohamed Morlu to security of the human person as provided for in article 6 of the African Charter on Human and People's Rights and article 9 of the ICCPR.
- (iii) A declaration that the Republic of Sierra Leone is legally responsible for violating the right of Mohamed Morlu to freedom from torture under article 5 of the African Charter; article 7 of the ICCPR and articles 1, 2, 12, 13, 14 and 16 of the [Convention against Torture].
- (iv) An order that the Republic of Sierra Leone should conduct an effective investigation into the shooting of Mohamed Morlu on 23rd March 2017, to identify the perpetrators, and bring them to justice.
- (v) An order for the Republic of Sierra Leone to pay to the [Applicant] financial compensation in the sum of Two Hundred and Fifty Thousand Dollars only (USD 250, 000), such amount being untaxable.

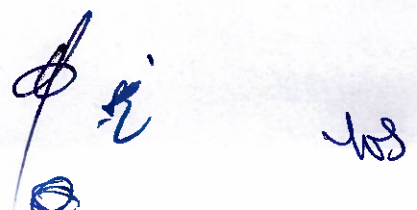
- (vi) An order for the Republic of Sierra Leone to bear the cost of Mohamed Morlu's medical treatment for any future surgical intervention to remove the bullet still lodged in his abdomen.
- (vii) An order for the Republic of Sierra Leone to undertake measures to prevent use of excessive violence by its law enforcement agents in times of peaceful protest, including training, provision of adequate law enforcement tools among others.
- (viii) Any further order or orders as the Court deems fit to make in the circumstances of this case.

VI. CASE OF THE RESPONDENT

A. Summary of Facts

22. Respondent says that there were ongoing strike actions by lecturers at Njala University in Bo City, Sierra Leone where the Applicant was a student. The Applicant joined protest marches to various offices including the Ministry of Education office in Bo.

23. Claiming that their concerns remained unresolved, the students, clad in black, embarked on another protest on 23 March 2017 in large numbers and christened it as "Black Thursday". They blocked streets and obstructed traffic, turning the protest into an event that was far from peaceful.



24. According to Respondent, police officers tried to contain the situation in the best way possible. However, they were met with resistance from the students some of whom started pelting the officers with stones thereby endangering their lives.

25. The police allegedly fired some warning shots to stop the attack on them resulting in the Applicant being hit by a stray bullet. That as confirmed by Applicants own pleadings, he was never targeted and shot at. Applicant was rushed to a hospital to receive treatment. He later allegedly went to Ghana for further treatment.

26. Respondent denies that it has violated any of the fundamental human rights of the Applicant.

B. Pleas in Law

27. For its case, Respondent relies on various judicial decisions including *Gabriel Shumba v Zimbabwe* (African Commission, Comm No. 288/04); *Godswill Tommy Udoh v Nigeria* (ECW/CCJ/JUD/26/16); and *Musa Saïdykhan v The Gambia* [2010] CCJELR 163.

C. Reliefs Sought

28. The Respondent requests the Court to dismiss the Application for the Applicant's failure to prove his claims and the inconsistency of his claims with the facts of the incident as it occurred. It prays for any other orders the Court deems fit to make in favour of the Respondent.



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VII. JURISDICTION OF THE COURT

29. Under Article 9(4) of the Court's Protocol, 'the Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.' It is settled in the jurisprudence of the Court that to invoke this jurisdiction, it is sufficient for an Applicant to allege that violations of human rights have taken place in the territory of the Respondent state and that the Respondent is responsible for those violations, but without prejudice to the determination of the claims on the merits after hearing both parties. (See *Registered Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria* ECW/CCJ/JUD/06/23, para 38). In this case, the Applicant alleges that he was shot by a police officer during a students' protest resulting in alleged violations of his right to security of the person, freedom from torture and right to effective remedy. The Respondent has not objected to the Court's jurisdiction over the matter. For these reasons, the Court concludes that it has jurisdiction under Article 9(4) of the Court's Protocol to determine the case of the Applicant.

VIII. ADMISSIBILITY OF THE APPLICATION

30. Article 10(d) of the Court's Protocol provides that access to the Court is open to 'individuals on applications for relief for the violation of their human rights; the submission of the application for which shall: (i) not be anonymous, nor (ii) be made while the same matter has been instituted before another international court for adjudication.' This provision establishes three main admissibility criteria which are (a)



the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter before another international court or tribunal. See *Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167 (para 18).

31. In this case, the Applicant alleges facts indicating that he was a victim of gun violence at the hands of a Sierra Leonean police officer during a demonstration where he was exercising his right to protest. Therefore, the Applicant has satisfied the victim status or standing requirement for admissibility under Article 10(d) of the Court's Protocol, as he has demonstrated *prima facie* that his human rights have been violated, and the violation appears to have been caused by the conduct of the Respondent State and its agents. (See *Attipoe Kuaku Richard & 19 Others v Sierra Leone* ECW/CCJ/JUD/07/23, para 41).

32. The Court also notes that the application has not been filed anonymously, nor is there evidence that the Applicant has submitted the present matter to another international court or tribunal seeking the same or substantially the same remedies he is seeking before this Court. For these reasons, the Court concludes that the Application is admissible.



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IX. MERITS

33. Based on the Applicant's pleadings and reliefs sought, the Court is invited to make three main determinations of human rights violations namely:

- (a) That Respondent violated Applicant's right to security of the human person.
- (b) That Respondent violated Applicant's right to be free from torture.
- (c) That the Respondent violated Applicant's right to a remedy and access to justice by failing to effectively investigate and prosecute perpetrators of the gun violence suffered by the Applicant.

34. The Court begins by noting that the shooting incident at the students' demonstration giving rise to the present case was perpetrated by unidentified officers of the Operations Support Division (OSD) of the Sierra Leone Police, law enforcement officers of the Respondent state who were acting in official capacity. Respondent does not deny this. In the circumstances, the Court concludes that the shooting incident and the resulting injury to the Applicant is attributable to the Respondent. (See *Articles on Responsibility of States for Internationally Wrongful Acts 2001*, Article 4).

35. The Court now addresses each of the alleged human rights violations asserted by the Applicant arising as from the shooting incident and the injury sustained.



**(a) Alleged Violation of the Applicant's Right
to Security of the Human Person**

i. Submissions of the Applicant

36. On this claim, Applicant submits that the injury he suffered at the hands of the Respondent's law enforcement officers violates his right to security of his person within the meaning of Article 6 of the African Charter and Article 9 of the ICCPR. In support of this argument, Applicant relies on the decision of this Court in *Registered Trustees of Jama'a Foundation and 5 Others v Nigeria* (ECW/CCJ/JUD/04/20), para 104, where the Court stated that the right to security of the person protects individuals from intentional bodily or mental harm, whether they are detained or not.
37. Applicant further submits that standards of human rights law require that law enforcement agents should only use potentially lethal force as a matter of last resort, and such force, when used should be proportionate to the objective for which it is used. Citing *Mouvement Burkinabe de Droits de l'Homme et des Peuples v Burkina Faso* (ACHPR, Comm No 204/97, para 43) Applicant contends that even when demonstrations are deemed unlawful because administrative procedures for the protest have not been complied with, the use of state sanctioned violence against demonstrators is to be deplored. That law enforcement officials undertaking crowd control operations must ensure that 'only the barest minimum of damage and violation of physical integrity' may be caused to demonstrators. (*Mouvement*

Burkinabe de Droits de l'Homme et des Peuples v Burkina Faso, para 43).

38. Applicant submits that in this case, the OSD officers shot at him and other unarmed students embarking on a peaceful protest who posed no threat to the lives of the police or anyone else, and who could have been dispersed by less violent means. Accordingly, Respondent is liable for the violation of his right to security of the person resulting from the gunshot injuries sustained while exercising his right to peacefully protest.

ii. Submission of the Respondent

39. In response to these arguments, Respondent states that the Applicant was merely hit by an accidental stray bullet during a crowd control operation. Respondent therefore contends that Applicant's right to security of the person has not been violated as there is no evidence that Applicant was subjected to any form of exploitation, degradation, slavery, torture, or cruel, inhuman, or degrading treatment.

iii. Analysis of the Court

40. On the right to security of the person, the Court begins by recalling Article 6 of the African Charter which states that '[e]very individual shall have the right to liberty and to the security of his person.' Article 9(1) of the ICCPR, to which Respondent is a party, also affirms in identical terms that '[e]veryone has the right to liberty and security of person.'

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41. In *Sudan Human Rights Organisation and Another v Sudan* (2008) AHRLR 153 (para 170) the African Commission noted that Article 6 of the African Charter embodies a dual right consisting of ‘the right to liberty’ and ‘the right to security of the person’. The Commission explained that an individual’s right to security of his person has a public element which requires the state to protect ‘the physical integrity of its citizens from abuse by official authorities’. It also has a private element which looks to how ‘the state protects the physical integrity of its citizens from abuse by other citizens (third parties or non-state actors).’ (*Sudan Human Rights Organisation and Another v Sudan* (2008) AHRLR 153, para 175).

42. In its *General Comment No. 35 on Article 9 of the ICCPR*, the Human Rights Committee has also stated that ‘[s]ecurity of person concerns freedom from injury to the body and the mind, or bodily and mental integrity’ and has as its aim protection of the individual ‘against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained’. (*General Comment No 35*, paras 3 & 9). It requires states to protect individuals from ‘foreseeable threats to life or bodily integrity proceeding from any governmental or private actors’ and to ‘prevent and redress unjustifiable use of force in law enforcement’. (*General Comment No 35*, para 9). Accordingly, in *Leehong v. Jamaica* (Comm No. 613/1995) the Human Rights Committee held that the shooting of the Applicant from behind before arresting him when he was unarmed and posed no danger to the police

was an unjustifiable infliction of bodily injury and a violation of his right to security of the person. (Ibid, para 9.3).

43. In the present case, the uncontroverted evidence establishes that the Applicant participated in a student protest against a four-month-long lecturers' strike, that had severely impacted their studies. Officers from the Respondent's police force, engaged in what seemed to be a crowd control operation, fired live ammunition without prior warning as the students presented their grievances at the Ministry of Education offices in Bo. The Applicant and other students were hit by live ammunition while attempting to flee the scene.

44. It is important to emphasize that even if the students' protest had escalated, as alleged by the Respondent, firing live ammunition into the crowd without any prior warning for the students to disperse was heavy-handed and unjustified in the circumstances. The natural and probable consequence of such a conduct was that somebody would be injured or killed as indeed happened in this case. It is irrelevant that the officers who fired the shots may not have had a specific person in mind as the target. Anyone at the protest, including the Applicant, was a target of such unjustified and indiscriminate shooting. Therefore, the Court rejects Respondent's assertion that the Applicant merely got injured from an accidental stray bullet. Given the circumstances, the Court concludes that the Respondent violated the Applicant's right to security of the person, contrary to Article 6 of the African Charter and Article 9 of the ICCPR, as its law

enforcement officers failed to prevent the unjustifiable use of force, resulting in avoidable harm to the Applicant.

(b) Alleged Violation of Applicant's Right to Freedom from Torture

i. Submissions of the Applicant

45. On this claim, Applicant submits that Article 5 of the African Charter requires respect for the inherent dignity of the human person and prohibits all forms of degradation of the human person including torture and cruel, inhuman, or degrading punishment and treatment. Further, that by Article 7 of the ICCPR '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' For a definition of what amounts to torture, Applicant relies on Article 1 of the Convention Against Torture (CAT) which defines torture as:

[A]ny 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.

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46. Applicant submits that based on this definition which reflects customary international law, the gunshot injury he suffered at the hands of the OSD officers amounts to torture because:

- i. the pain he suffered from the gunshot was acute and severe;
- ii. the shooting was intentional;
- iii. the shooting was meant to intimidate him and other students who were engaged in the protest; and
- iv. the shot was fired by police officers who are officials of the government of Sierra Leone.

47. Applicant further submits that the CAT requires state parties to criminalize torture, conduct effective investigations to identify, prosecute and punish perpetrators of torture, and compensate victims of torture. Respondent has failed to discharge any of these obligations. Therefore, the Court should find that Applicant was subjected to torture for which the Respondent is responsible.

ii. Submission of the Respondent

48. In response, Respondent denies that Applicant was tortured given that there was no intentional infliction of severe pain or suffering be it physically or mentally on the Applicant for purposes of obtaining information or confession at the instigation of a public official or other person acting in official capacity. According to Respondent, the



Applicant was hit by an accidental stray bullet which was never targeted at him. Therefore, Applicant has failed to establish that he was subjected to torture for which the Respondent is responsible.

iii. Analysis of the Court

49. On this issue, the Court notes that, by the definition of torture in Article 1 of the CAT, torture occurs when there is:

- a) intentional ill-treatment of a person causing severe physical or mental pain or suffering;
- b) the purpose of the ill-treatment is to obtain a confession from the victim or a third person, to punish, intimidate, or coerce the victim or a third person, or to advance any discriminatory purpose; and
- c) it is carried out by a public official or a person acting in an official capacity or with their encouragement, consent, or acquiescence.

50. In this case, concerning intention, the Court has already determined that the deliberate and conscious act of firing live ammunition into the crowd of protesting students had a natural and probable consequence of causing bodily injury or death to any of the protesting students. Consequently, the fact that the person hit, the Applicant, was not a specific target of the gunshot and the resulting injury is inconsequential. This is because anyone present at the protest was within the line of danger from the unjustified and indiscriminate shooting. Therefore, the Court concludes that the circumstances

surrounding the shooting demonstrate a level of deliberateness sufficient to satisfy the element of intentional ill-treatment for purposes of torture.

51. That said, what distinguishes an act of torture from other cruel, inhuman, or degrading treatment is the severity of the pain or suffering inflicted, and the purpose of the ill-treatment. In assessing severity of the pain or suffering for a finding of torture, a Court would often take account of 'all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.' (*Selmouni v France* ECHR App No. 25803/94, para 100).

52. However, while prolonged or repeated ill-treatment of a person is often an indication of torture, there is no legal requirement for it to be systematic. Indeed, the drafting history of the CAT reveals that the negotiating states rejected the United Kingdom's proposal, which would have required pain or suffering to be intentionally and 'systematically' inflicted for torture to be committed. See Garith Zach, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I Substantive Articles, Art.1 Definition of Torture' in Manfred Nowak et al (eds), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd ed, Oxford University Press, 2019) para 29. Accordingly, so long as the minimum threshold of severity is met, 'even single, isolated acts can be considered to constitute torture.' (Ibid).

53. In this case, the shooting of the Applicant was a singular act. However, the Court is of the view that the physical pain and suffering endured by the Applicant, evident through his three-week hospitalization and surgery at a hospital in Bo, meets the requirement of severity under Article 1 of the CAT. Further medical attention, including in Ghana to address complications from the bullet which is still lodged in his abdomen, underscores the gravity of the inflicted pain and suffering.

54. Regarding the purposive element, the Applicant argues that the shooting was intended to intimidate him and other students engaged in the protest. The Respondent contends that the shooting was an accidental incident not meant to extract a confession, and therefore, no torture was committed.

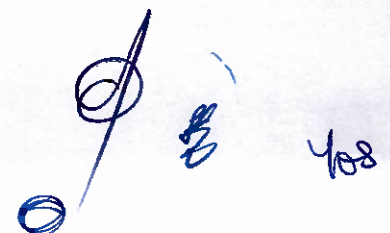
55. The Court notes that the Respondent has taken a limited view of the purposive element of the definition of torture. Clearly, from Article 1 of the CAT, the purposes for which ill-treatment amounting to torture may be committed are not limited to obtaining a confession. The list also includes punishment of the victim for an act committed by them or a third person, intimidation of the victim or a third person, and any reason based on discrimination of any kind.

56. The Court agrees with the Applicant that the objective purpose of the shooting was to intimidate him and other protesting students. In reaching this conclusion, the Court considers that, at an earlier time

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during the demonstration, fully armed OSD officers had attempted to stop the protest by setting up a roadblock on the route taken by the protesting students. Despite this, the students managed to run past it and made their way to the offices of the Ministry of Education. Subsequently, the OSD officers pursued the students in two pick-up trucks, arresting and beating them along with journalists covering the protest. Some students fought back by hurling stones, prompting unidentified OSD officers to open fire on the crowd, injuring the Applicant and others and killing at least one student. It becomes evident, considering all the circumstances, that the shooting was the culmination of a series of actions meant to intimidate or coerce the protesting students to disperse or halt the demonstration.

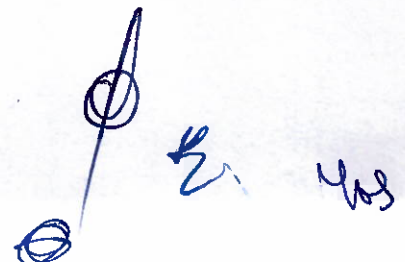
57. Accordingly, considering the intentional nature of the shooting, its infliction of severe physical pain or suffering on the Applicant, and the fact that it was carried out by state law enforcement officials, the Court concludes that the Applicant was tortured within the meaning of Article 5 of the African Charter, Article 7 of the ICCPR, and Article 1 of the CAT.

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**(c) Alleged Violation of Applicant's Right
to a Remedy and Access to Justice**

i. Submissions of the Applicant

58. Applicant submits that Article 1 of the African Charter requires state parties to take necessary measures to give effect to the rights contained in the Charter. That Article 1 of the Charter as read with Article 7(1)(a) imposes on state parties the duty to protect victims of human rights violations including by providing remedies for the violations and bringing perpetrators to book through effective investigations and prosecution. This obligation, according to Applicant, is also reflected in Article 2(3) of the ICCPR to which the Respondent is a party.
59. Applicant relies on several judicial decisions, including *Zimbabwe Human Rights NGO Forum v Zimbabwe* (ACHPR, Comm No 245/02) in which the obligation to provide remedy for victims of human right violations and to conduct effective investigations with the view to prosecuting perpetrators has been upheld.
60. Applicant submits that since March 2017 when the incident happened, the Respondent has not conducted an effective investigation into the circumstances of his shooting at the demonstration to identify, prosecute and punish the perpetrators. Nor has it compensated him for the violation of his rights. Consequently, Respondent has breached its obligation under Article 1 of the African

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Charter, Article 2(3) of the ICCPR and Articles 4, 5, 12, 13 and 14 of the Convention against Torture.

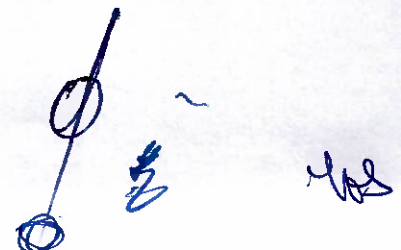
ii. *Submission of the Respondent*

61. Respondent denies violating the Applicant's right to an effective remedy and access to justice under Article 1 of the African Charter and Article 2(3) of the ICCPR. The Respondent asserts that investigations were conducted by the Sierra Leonean Police when the incident occurred. Further investigations are being carried out based on recommendations from the Independent Police Complaints Board. However, this latter investigation has been prolonged due to the technical nature of the matter. That said, the Respondent states that it is not opposed to Applicant's claim of compensation although investigation into the matter is pending.

iii. *Analysis of the Court*

62. Regarding the alleged violation of the Applicant's right to an effective remedy, the Court recalls that the obligation of states to take measures to fulfil or protect human rights as reflected in Article 1 of the African Charter and Article 2(2) &(3) of the ICCPR, entails a duty to provide effective remedies for human rights violations when they occur.



63. Accordingly, in *Gan Allah Fulani Development Foundation v Federal Republic of Nigeria* (ECW/CCJ/JUD/06/23) the Court observed as follows:



69. The Court notes that the general obligation of states to fulfil human rights includes the duty to provide effective measures to redress human right violations when they occur. In *General Comment No. 31* (on the ICCPR), the Human Rights Committee details the specific obligations entailed in the duty to provide redress or effective remedies for human rights violations which are (i) the duty to investigate allegations of violations promptly, thoroughly, and effectively through independent and impartial bodies; and (ii) the duty to make reparations to individuals whose rights have been violated in appropriate form such as compensation, rehabilitation and guarantees of non-repetition. (See *General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, paras 15-17).

70. Under the African Charter, and the other relevant human rights instruments ratified by the Respondent, the obligation to investigate entails the conduct of prompt and impartial inquiries into the alleged violations with the view to identifying and holding perpetrators accountable, whether they are state officials or private persons. Failure of a state to conduct effective investigation into violations of human rights will engage the duty of the state to provide effective redress.

64. In this case, the evidence indicates that the Independent Police Complaints Board (IPCB) conducted the initial investigation but determined that a comprehensive ballistic examination was necessary to conclusively identify which discharged bullets injured the Applicant, especially if liability could be attributed to a specific officer of the OSD. Consequently, the IPCB referred the matter to the

Director of Public Prosecutions, who appears not to have taken any concrete steps to complete the further investigations required.

65. The Court recalls ‘that the duty to investigate alleged violations of human rights must be promptly and impartially undertaken and be verifiable through documented findings and actions taken. Satisfactory evidence of such an investigation, and the actions taken pursuant to its findings, must be furnished to the Court.’ (*Registered Trustees of Gan Allah Fulani Development Association of Nigeria v Federal Republic of Nigeria*, para 72.)

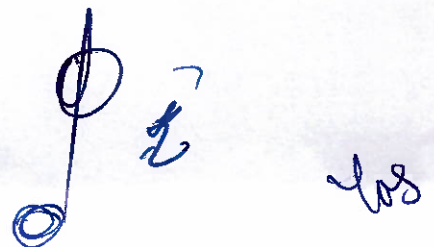
66. However, several years later, the Respondent merely asserts that follow-up investigations from the IPCB are still ongoing due to the technical nature of the matter. Yet, the Respondent has not substantiated this claim by providing any proof of the concrete steps or actions taken, including the current stage of the investigations. No proof has been shown to the Court indicating any suspects the investigations have produced so far, let alone any steps being taken to prosecute or discipline such suspects. Considering the public nature of the incident, the presence of eyewitnesses, and the investigative resources available to the Respondent, the Court does not find that the Respondent has met the standards for conducting a prompt, impartial, and verifiable investigation aimed at identifying, prosecuting, and punishing the perpetrators of the shooting incident. Moreover, the Respondent, by its own admission, has not provided any compensation to the Applicant for the suffering he has endured.

67. Consequently, the Court concludes that the Respondent has not fulfilled its obligation to provide effective redress to the Applicant by conducting prompt, impartial, and verifiable investigations that would lead to holding the perpetrators accountable.

X. REPARATIONS

68. Every violation of international law by a state, including its human rights obligations, entails a responsibility to make full reparations for the injury caused. See *Case Concerning the Factory at Chorzow (Jurisdiction)* (Permanent Court of International Justice) [1927] PCIJ Series A, No. 9, p 21; and *Articles on Responsibility of States for Internationally Wrongful Acts 2001*, art 31. Therefore, having determined that the Respondent violated Applicant's right to security of the person, freedom from torture and the right to an effective remedy, the Court now considers the appropriate reparations Respondent must make.

69. In addition to the declarations of violation of his rights, Applicant requested financial compensation of \$250 000, an order for the Respondent to bear the cost of any future surgery to remove the bullet still lodged in his abdomen, an order directing the Respondent to investigate the shooting incident to identify and prosecute the perpetrators, and an order for Respondent to take measures to prevent excessive use of force by its law enforcement agents.



70. Regarding compensation, the Court notes that there generally two types. There is special damages covering the financially assessable losses of the Applicant which must be specifically pleaded and proved. Then, there is general (or non-pecuniary) damages which is generally awarded at the discretion of the Court for the psychological harm, distress, pain and suffering, or other non-quantifiable injury or loss suffered by the victim as a result of the violation. (See *Gregory J. Todd v Federal Republic of Nigeria*, ECW/CCJ/JUD/41/23, paras 78-79).

71. Applicant did not request special damages; therefore, the Court does not make any order under that head of compensation. Regarding general damages for the violations suffered, Applicant requests that the Court grant him \$250, 000. As earlier noted, general damages is awarded for the psychological harm, distress, pain and suffering, or other non-quantifiable injury or loss suffered by the victim as a result of the violation. It is difficult to place monetary value on any of these non-quantifiable losses; therefore, the award of general damages is often an imperfect exercise. The Court may take account of factors such as the gravity or egregiousness of the violation and the conduct of the state in the aftermath of the violation, but ultimately, it is up to the Court to exercise its discretion in equity to determine what amounts to a fair compensation to be paid.

72. In the circumstances of this case, the Court considers that the sum of Twenty-Five Thousand Dollars (\$25,000), payable in the official currency of the Respondent at the prevailing exchange rate on the date

of payment, will be sufficient compensation for the suffering the Applicant has endured as a result of the violation of his rights.

73. The Court grants other reliefs sought by Applicant only to the extent indicated in the operative clause of this judgment.

XI. COSTS

74. Pursuant to Article 66(11) of the Rules of the Court, the Court decides that each party shall bear their own costs.

XII. OPERATIVE CLAUSE

75. For the foregoing reasons, the Court sitting in public and after hearing the parties:

On jurisdiction


- i. *Declares* that the Court has jurisdiction over the Application.

On Admissibility

- ii. *Finds* that the Application is admissible.

On the Merits

- iii. *Declares* that Respondent violated the Applicant's right to security of the human person contrary to Article 6 of the African Charter and Article 9 of the ICCPR.

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- iv. *Declares* that the Respondent violated the Applicant's right to freedom from torture contrary to Article 5 of the African Charter, Article 7 of the ICCPR and Article 1 of the Convention against Torture.
- v. *Declares* that the Respondent violated the Applicant's right to an effective remedy contrary to Article 1 of the African Charter; Article 2(3)(a) of the ICCPR; and Articles 4, 5, 12, 13 and 14 of the Convention against Torture.

On Reparations

- vi. *Orders* the Respondent to pay the Applicant compensation of Twenty-Five Thousand Dollars (\$25,000), payable in the official currency of the Respondent at the prevailing exchange rate on the date of payment, for the violation of his rights.
- vii. *Orders* that the Respondent shall bear the cost of any future surgery and associated medical treatment to remove the bullet lodged in the Applicant's abdomen.
- viii. *Orders* that the Respondent shall promptly investigate, identify, and prosecute the perpetrators or any persons responsible for the shooting of the Applicant during the students' protest on 23 March 2017.

Yes

- ix. *Orders* that the Respondent shall take all necessary measures, including the training of its law enforcement officers in crowd control and the use of lethal force, to prevent unjustified and excessive use of force against peaceful protesters.

On Costs

- x. *Decides* that each party shall bear their own costs incurred in this Application.

Done at Abuja this 28th day of February 2024 in English and translated into French and Portuguese.

Hon. Justice Edward Amoako **ASANTE**
Presiding/Judge Rapporteur

Hon. Justice Gberi-Be **OUATTARA**

Hon. Justice Sengu Mohamed **KOROMA**

ASSISTED BY:

Dr. Yaouza **OURO-SAMA** (Chief Registrar)

