



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

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

In the case of

- 1) Hassan Kargbo,
- 2) Mohamed Fornah,
- 3) Abibatu Sesay,
- 4) Momoh Tholley,
- 5) Alimamy Sillah,
- 6) Alie Abdul Kamara,
- 7) Joseph Kargbo,
- 8) Alfred Jalloh

Application N° : ECW/CCJ/APP/36/22

Judgment N°. ECW/CCJ/JUD/37/24

JUDGMENT DELIVERED AT

ABUJA

ON 14th OCTOBER 2024

JUDGMENT N° ECW/CCJ/JUD/37/ 24

Hassan Kargbo and 7 others

REQUERANTS

V.

STATE OF SIERRA LEONE

DEFENDANT

BEFORE THEIR LORDSHIPS

Hon. Judge Ricardo Cláudio Monteiro GONÇALVES

Presiding

Hon. Juge Gberi-Bè OUATTARA

Member/Judge Rapporteur

Hon. Judge Amoako Edward ASANTE

Member

ASSISTED BY: Me. Aboubakar Djibo Diakité

Registrar

I. REPRESENTATION OF THE PARTIES

Oludayo Fagbemi Esq.

Conseils des requérants

THE DEFENDANT STATE was not assisted by any Counsel



II. JUDGMENT OF THE COURT

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

III. DESIGNATION OF THE PARTIES

1. The applicants are Hassan Kargbo domiciled at Makeni quartier Radio Maria (1), Mohamed Fornah domiciled at Makeni quartier Mabanta Road (2), Abibatu Sesay domiciled at Makeni Teko Road acting in the name and on behalf of her younger brother Augustine Conteh (3), Momoh Tholley of Makeni Savage Square acting in the name and on behalf of his nephew Alusine Sesay (4), Alimamy Sillah of Makeni Fofana Street acting in the name and on behalf of his nephew Mohamed Sillah (5), Alie Abdul Kamara domiciled at Makeni Freetown Highway acting in the name and on behalf of his elder brother Thaimu Kamara (6), Joseph Kargbo domiciled at Makeni Lower John Street acting in the name and on behalf of his younger brother Foday Kargbo (7) and Alfred Jalloh domiciled at Masingbi Eight Corner (8) acting in the name and on behalf of his nephew John Jalloh, all of Sierra Leonean nationality (hereinafter referred to as 'the applicants').
2. The Respondent is the State of Sierra Leone, a Member State of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments relating to the protection of human rights (hereinafter referred to as "the Respondent").

IV. INTRODUCTION

3. The purpose of these proceedings is to establish that the State of Sierra Leone has violated the applicants' right to security of person, right to life and right to an effective remedy, and to order the defendant to pay compensation for the prejudice suffered.

The defendant did not appear in court and neither did it file any pleadings or exhibits for its defence.

V. PROCEDURE BEFORE THE COURT

4. On 12 August 2022, the applicants lodged an application with the Court Registry against the defendant for breach of their right to security of person, their right to life and their right to an effective remedy.

The application was served on the respondent state on the same day as it was received at the Court Registry (**Exhibit no. 1**);

5. On 20 March 2023, the plaintiffs filed at the Registry a motion for default judgment against the defendant. (**Exhibit no. 2**).

This application was notified to the defendant on the same day that it was received at the Court Registry;

6. At the hearing of 15 May 2023, one of the members of the panel who stated that he had already sat in a panel that heard the same before recused himself and the Court duly noted his recusal. Another judge was appointed to replace the judge who recused himself before the case was duly brought back for hearing;

7. On 29 September 2023, the Court verified that the defendant had been served with the application initiating proceedings and with the application for default judgment against the defendant. Counsel for the plaintiffs argued the case on the merits and the Court reserved judgment for 25 January 2023.

Upon that date, the case was adjourned;

VI. ARGUMENTS BY THE APPLICANTS

a) *Summary of facts*

8. The applicants state that on the evening of 17 July 2020, the youth of Makeni decided to demonstrate their dissatisfaction with the decision of the Government of Sierra Leone to relocate to another town a generator which provided Makeni with electricity. They explain that some of the young people of Makeni did not appreciate this decision and took to the streets to protest;

9. In reaction to this protest, officers of the Sierra Leonean army and police cracked down on the demonstrations, using firearms and tear gas on demonstrators or people considered to be demonstrators in many areas of the town of Makeni ;

10. They claim that on the same evening, the police shot dead Foday Kargbo, 35, Joseph Kargbo's younger brother, who had gone to a shop near his home to buy a mosquito repellent spiral. The applicants state that he was unarmed and had not taken part in the demonstrations. He died as a result of gunshot wounds, leaving behind two children, two brothers and three sisters, as he was the family's main breadwinner ;



11. The applicants report that on the second day, i.e. 18 July 2020, the demonstrations continued throughout the town of Makeni. The police therefore imposed a curfew and did not hesitate to open fire on several young people found in the streets;

12. They claim that Hassan Kargbo was shot as he returned from farm and tried to turn away from the police. He was unarmed and posed no threat to anyone. His bullet wounds left him paralysed;

13. The applicants state that Mohamed Fornah was on the veranda of his house when he was hit by a buckshot fired by the law-enforcement officers, causing him injuries. He was also unarmed and posed no threat to any one;

14. Augustine Conteh, Abibatu Sesay's younger brother, was shot in the neck by the police that day as he went to top up the call credit in his mobile phone. He was unable to be taken to hospital for medical treatment and died as a result of his injuries, leaving behind a young daughter, two sisters and a brother.

15. The applicants add that Alusine Sesay, a young secondary school student on his way home from school, had been shot in the back and died six days later as a result of his injuries, leaving behind his young son, his mother and other members of his family ;

16. They also report that Mohamed Sillah, a young secondary school student was shot dead by the police. He left behind his mother and other close relatives;

17. The applicants state that Thaimu Kamara, a university student and commercial motorbike rider, was shot in the back by the police as he tried to enter his house

while fleeing the confusion in Makeni. He leaves behind a young daughter, his parents and other family members;

18. The applicants further contend that the police had also shot John Jalloh in the same circumstances and that he was survived by his very elderly grandmother, his younger sister and his younger brother ;

19. They argue that the deceased victims whose close relatives are among the applicants were all shot dead by Sierra Leonean law enforcement officers in Makeni from 17 to 18 July 2020, in the context of the youth demonstration in Makeni, and that to date the perpetrators of these shootings and killings have not been brought to justice. There has been no effective investigation into the use of lethal force by the Sierra Leone law enforcement agencies;

b) *Pleas – in - laws invoked*

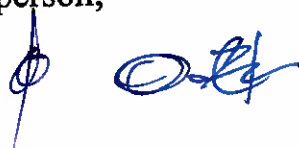
20. The applicants put forward the following pleas-in-law: -

- Violation of articles 1, 4, 5, and 7 (1) (a) of the African Charter on Human and Peoples' Rights (ACHPR);
- Violation of articles 2 (3), 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR);
- Violation of articles 1, 2, 12, 13, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

c) *Conclusions*

21. The applicants solicit that may it please the Court

- To declare and hold that the defendant has violated the right of the plaintiffs Hassan Kargbo and Abibatu Sesay to security of person;



- To declare and adjudge that the defendant has violated the right to life of Hassan Kargbo, Mohamed Fornah, Augustine Conteh, Alusine Sesay, Mohamed Sillah, Thaimu Kamara, Foday Kargbo and John Jalloh;

- To declare and rule that the defendant infringed the applicants' right to an effective remedy;

- Enjoin the defendant to conduct an effective investigation into the Makeni incidents in order to identify and prosecute the law enforcement officers who used their firearms;

- To order the defendant to pay the plaintiffs the following sums of money:

Five hundred thousand (500,000) USD to Hassan Kargbo, three hundred thousand (300,000) USD to Mohamed Fornah, two hundred and fifty thousand (250,000) USD to each of the other claimants;

VII. ARGUMENTS BY THE DEFENDANT

a) Statement of facts

22. The defendant, which, under Articles 34 and 35 of the Rules of Court had a period of thirty (30) days from notification of the application within which to lodge at the Registry a statement of defence, neither lodged that statement of defence on expiry of the period allowed to it nor sought an extension of that period in order to lodge it at the Registry of the Court ;



VIII. JURISDICTION

23. The Court points out that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court of Justice, which provides that: « *The Court has jurisdiction to hear cases of human rights violation that occur in any Member State* »;

24. The Court observes that the rights relied on by the applicants are among the human rights falling within its jurisdiction. Consequently, it must declare that it has jurisdiction to hear the application.

IX. ADMISSIBILITY

25. The Court notes that the admissibility of applications before it is governed by the provisions of Article 10-d of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court, which provides that: « ...Access to the Court is open to *any person who who is victim of human rights violation*>>;

The application submitted for this purpose:

- i) *i) shall not be anonymous ;*
- ii) *ii) shall not be brought before the Court of Justice of the Community where it has already been brought before another competent international court*
»



In the present case, the Court notes that the applicants who claim to be victims of a breach of their fundamental rights are clearly identified. The application is therefore not anonymous;

26. The Court notes, however, that there are two groups of applicants in this case:

- The first group is made up of Hassan Kargbo and Mohamed Fornah, who are acting on their own behalf as direct victims of injuries sustained during the events at Makeni;

- The second group of applicants is made up of individuals who are acting as indirect victims, relying on their status as heirs of the deceased victims. They are Abibatu Sesay, acting as successor in title to the late Augustine Conteh, who is said to be his younger brother; Momoh Tholley, acting as successor in title to the late Alusine Sesay, who is said to be his nephew; Alimamy Sillah, acting as successor in title to the late Mohamed Sillah, who is said to be his nephew; Alie Abdul Kamara who acts as successor in title to the late Thaimu Kamara who is said to be his elder brother; Joseph Kargbo who acts as successor in title to the late Foday Kargbo who is said to be his younger brother and Alfred Jalloh who acts as successor in title to the late John Jalloh who is said to be his nephew;

27. The Court accepts, indeed that the next of kin of deceased victims may rely on their status as indirect victims in order to bring a claim for compensation for the harm caused to them by the loss of a loved one ;

28. However, the Court points out that the admissibility of such an application is subject to proof of the family relationship between the deceased victim and the person claiming to be his successor in title;

29. The Court notes that, in the present case, the applicants, who are acting as heirs of the deceased victims, have not produced any document enabling them to establish the identity of the victims or their relationship to them;

30. The Court accordingly holds that they have not proved that they are victims of the violations of human rights which they invoke as grounds for their action and that they therefore do not have legal standing. The application, as far as they are concerned, must be declared inadmissible;

31. Furthermore, with regard to the second criterion for the admissibility of an application, the Court notes that there is no evidence that the applicants have applied to another international court with jurisdiction in human rights matters to hear the same case;

32. Consequently, the Court must declare the application as admissible in respect of the applicants Hassan Kargbo and Mohamed Fornah.

X THE NATURE OF THE DECISION

33. The Applicants solicit that the Court should render a default judgment against the Respondent State. In support of their application, they explain that they brought an application against the State of Sierra Leone before this Honourable Court of Justice on 12 August 2022 and that on the same day, the Chief Registrar of the Court notified the Respondent's judicial agent of their application, stating that the Respondent had one month (30) days in which to file a statement of defence;



34. The applicants argue that the time-limit of one month (30 days) given to the defendant to file a statement of defence had expired without it doing so, despite the fact that, under the terms of Article 90 of the Rules of Court, « *If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.* »;

On 20 March 2023, they applied to the Court for a default judgment to be entered against the defendant in accordance with the provisions of the afore - stated Article 90.

ANALYSIS OF THE COURT

ON THE ADMISSIBILITY OF THE APPLICATION FOR A JUDGMENT BY DEFAULT

35. The Court notes that under Rule 90 of the Rules of Court, '*If the respondent, who has been duly summoned, does not reply to the application in the prescribed form and within the prescribed time-limit, the applicant may request the Court to award him the relief sought*'. »;

36. The Court notes that in the present case, the defendant received notification of the application for a default judgment on 12 August 2022 at the habitual address of the Minister of Justice, the legal representative of the defendant;

37. The Court recalls that in accordance with Article 35 of the Rules of Court, the defendant had a period of one (01) month in which to file its statement of defence.

It therefore had until 12 September 2022 to file its statement of defence. By that date, no statement of defence had been filed by the defendant;

38. The Court wishes to point out that on 20 March 2023 the applicants requested that the Court adjudicate on their claims in accordance with Rule 90 of the Rules of Court;

39. The Court emphasises that pursuant to Article 90(4), before giving judgment by default, it examines the admissibility of the application, whether the formalities have been duly completed and whether the applicant's submissions appear to be well-founded. This is what the Court stated in the case of Mohammed El Tayyib v. The Republic of Sierra Leone, judgment no. ECW/CCJ/JUD/11/15, in the following terms : « *Granting the motion for default judgment against the defendant does not automatically mean that judgment on the merits has been given in favour of the applicant. The Court must examine the issues of jurisdiction, admissibility and evidence before deciding the case on the merits* »;

40. In the present case, the Court has already accepted that it has jurisdiction and that the application is admissible. Moreover, the application submitted complies with the required formalities;

41. The Court concludes, therefore that, in view of the foregoing, it is appropriate to declare the application for judgment by default admissible and to examine whether it is well-founded.



ON THE MERITS OF THE APPLICATION FOR A DECISION BY DEFAULT

42. The Court points out that a judgment is deemed to be rendered 'by default' when the defendant has remained outside the proceedings. A judgment delivered without the defendant filing a statement of defence is referred to as a 'default judgment';

43. The Court notes that in the present case, the applicants filed their application against the State of Sierra Leone with the Registry on 12 August 2022;

44. The Court notes that on 12 August 2022, the Chief Registrar notified the defendant's judicial agent of their application, specifying that he had one month (30) days in which to file a statement of defence;

45. The Court observes that the time-limit of one month (30 days) allowed to the defendant to file a statement of defence expired on 12 September 2022 and that on 20 March 2023 the applicants filed at the Registry a motion for judgment by default. The Court notes that that application was served on the defendant on 20 March 2023 and that the defendant did not react;

46. The Court notes that under Rule 90 of the Rules of Court: *« If the respondent, who has been duly summoned, does not reply to the application in the prescribed form and within the prescribed time-limit, the applicant may request the Court to award him the relief sought' »*;

The Court therefore concludes that in the present case, pursuant to Rule 90 of the Rules of Court, it is necessary to give judgment by default against the defendant.



XI AS TO THE MERITS OF THE CASE

47. The applicants claim that the defendant had breached their right to security of person (A), their right to life (B) and their right to an effective remedy (C).

A- ON THE VIOLATION OF THE RIGHT TO SECURITY OF PERSON

48. The applicants submit that the Sierra Leone law-enforcement officers had caused serious and permanent injuries to Hassan Kargbo and Mohamed Fornah by shooting them at close range during the demonstrations in Makeni. They believe that the injuries caused to them by the state agents using excessive force constitute a violation of their right to security of person.

ANALYSIS BY THE COURT

49. The Court notes that the right to security of person is a fundamental right protected by numerous international legal instruments, such as the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

50. The Court recalls that this right provides that everyone has the right to be protected against violence to life, physical and mental integrity, and security of person.

Violations of the right to security of person can take many forms, including physical violence, ill-treatment, torture, unlawful detention, harassment, discrimination, and threats or attempts to harm a person's physical or mental integrity;



51. The Court emphasises that the right to security of person is a universal right, which applies to all persons without discrimination. States have an obligation to protect this right and to ensure that all persons can fully enjoy their right to a safe and secure life;

52. Security of person refers to protection against bodily or psychological harm, or against bodily or mental harm. The right to security of person protects individuals against any intentional physical or mental harm, whether or not the victim is in custody;

53. Article 6 of the African Charter enshrines the right to liberty and security of person. It provides that « *Everyone has the right to liberty and security of person* ». This provision is in line with Article 3 of the Universal Declaration of Human Rights, which provides that « *Everyone has the right to life and security of his person* ». The same applies to Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), which provides that « *everyone has the right to liberty and security of person* »

54. The Court points out that international human rights law clearly states that law enforcement officers must only use their potentially lethal weapons as a last resort, and that when force is used, it must be proportionate to the purpose for which it is used, even in the case of demonstrations not authorised by the competent administrative authority.

55. The Court considers that the public authorities have adequate means at their disposal to disperse crowds and that those responsible for maintaining order must endeavour, in operations of this kind, to cause the minimum damage and harm to the physical integrity of demonstrators and to respect and preserve human life ;

56. The Court reiterates that the use of force is an exceptional measure to which law-enforcement officers may have recourse in the exercise of their duties only where other means of achieving the objective pursued are ineffective or unlikely to succeed. They must, as far as possible, distinguish between peaceful participants in a demonstration and people who commit acts of violence;

57. The Court notes that, in the present case, the Sierra Leone police officers used their weapons against unarmed civilians, in particular Hassan Kargbo and Mohamed Fornah, who posed no threat and who were wounded by the bullets from the officers' firearms, as attested to by the medical certificates and other attestations issued by the health officers who received them in order to treat their condition ;

58. The Court notes that the African Commission on Human and Peoples' Rights held the Nigerian State responsible for similar acts. The Commission found that it was because of the 'green light' given by the Nigerian Government to the security forces to deal directly with the Ogoni people that violence and murders were committed, with the aim of terrorising and subjugating the Ogoni people. This led to the excessive and illegal use of force, resulting in several deaths and injuries;

59. The Court therefore holds that the defendant violated the applicants Hassan Kargbo and Mohamed Fornah's right to security of person;

B ON THE VIOLATION OF THE RIGHT TO LIFE

60. The applicants report that the Sierra Leone police used their firearms against unarmed civilians. This shooting caused injuries to the applicants Hassan Kargbo and Mohamed Fornah and took the lives of Augustine Conteh, Alusine Sesay, Mohamed Sillah, Thaimu Kamara, Foday Kargbo and John Jalloh;

61. They argue that Article 4 of the African Charter on Human and Peoples' Rights (ACHPR) enshrines the right to life and prohibits any arbitrary deprivation of that right. The same applies to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).

ANALYSIS BY THE COURT

62. The Court notes that the right to life is undoubtedly the most important of human rights in the sense that it is its effectiveness which makes possible the enjoyment of the other rights inherent in human beings. Without the right to life, it is not possible to enjoy the other human rights. It is so important that virtually all international human rights protection mechanisms contain at least one provision devoted to it;

63. The Court points out that Article 4 of the African Charter on Human and Peoples' Rights (ACHPR) provides that « *the human person is inviolable. Every human being has the right to respect for his life and the physical and moral integrity of his person: no one may be arbitrarily deprived of this right* »;

- Article 3 of the Universal Declaration of Human Rights (UDHR) provides that « *everyone has the right to life, liberty and security of person* »;

- Article 6 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) provides that: « *the right to life is inherent in the human person. No one may be arbitrarily deprived of his life.* ». In addition to these provisions, article 2 paragraph 1 of the European Convention on Human Rights (ECHR) provides that: « *Everyone's right to life is protected by law. Death shall not be inflicted on anyone intentionally, except in execution of a sentence of death pronounced by a court of law in cases where the offence is punishable by this penalty by law.* »;

64. The Court observes that all the provisions just cited amply emphasise the sanctity of human life and the importance of its protection by all the relevant international legal instruments. It follows that no one may be sentenced to death or executed by the State. This is one of the reasons why it is provided in paragraph 2 of Article 2 of the ECHR that: « *homicide shall be deemed to have been lawfully committed only where it results from the use of force rendered absolutely necessary either to ensure the defence of any person against unlawful violence, or to effect a lawful arrest or to prevent the escape of a person lawfully detained, or to suppress, in accordance with the law, a riot or insurrection* »;

65. Indeed, the Court notes that taking another person's life unquestionably constitutes a violation of their right to life. In the case of Khamila Issaieva v. Russia of 15 November 2007, concerning the disappearance of Mr Issaieva during an operation in Chechnya, the European Court of Human Rights found that there had been a violation of the right to life following Mr Issaieva's death ;

66. The Court points out that the State's duty to protect the right to life imposes an obligation on the law-enforcement agencies to use force only as a last resort. This is particularly important when policing demonstrations. For example, in the case of George Iyanyori Kajikabi v. Egypt, the African Commission held that: « *Force may only be used in law enforcement to stop an imminent threat of death or serious injury. In this context, force includes lethal force, but also any other less serious form, and although preference should be given to weapons less likely to cause death or serious injury, even these weapons can cause death or serious injury if misused* »;



67. The Court recalls that States have a duty to protect life and that failure to comply with this obligation may result in the offending State being ordered to pay damages to the heirs of deceased victims. For example, following the death of a prisoner, the Human Rights Commission concluded that Cameroon had violated the prisoner's right to life by allowing the uncontrolled spread of potentially fatal diseases such as meningitis and cholera in the detention centre. (Case of Titiahonio v Cameroon, HRC, General Comment n°6, HRI/GEN/1/Revue 1 to 6, para 5);

68. Similarly, in the case of Asive Genc v Turkey, in which the applicant claimed that Turkey had violated the right to life of her premature baby who died for lack of neonatal care in local hospitals, the European Court of Human Rights found that Turkey had indeed violated Article 2 of the European Convention on Human Rights relating to the right to life because the infant had been the victim of a malfunction in hospital services in that he had been deprived of any access to appropriate emergency care;

69. However, since it was clear from the documents in the file that the applicants Hassan Kargbo and Mohamed Fornah were still alive, the Court considers that they could not validly maintain that their right to life had been seriously and irreversibly impaired. It follows that the defendant did not violate the applicants' right to life.

B ON THE INFRINGEMENT OF THE RIGHT TO AN EFFECTIVE REMEDY

70. The applicants submit that the respondent failed to carry out an investigation into the circumstances of the use of force by its officers which caused injuries to the applicants Hassan Kargbo and Mohamed Fornah and took the lives of Augustine



Conteh, Alusine Sesay, Mohamed Sillah, Thaimu Kamara, Foday Kargbo and John Jalloh. They consider that this failure by the defendant constitutes a violation of their rights to an effective remedy;

ANALYSIS BY THE COURT

71. The Court stresses that the principle of an effective remedy is imposed on States by international conventions, in particular articles 1 and 7 of the ACHPR and article 2 of the ICCPR;

72. Article 1 of the ACHPR provides that: « *the Member States of the Organization of African Unity (OAU), parties to this Charter, recognize the rights, duties and freedoms set forth in this Charter and undertake to adopt legislative or other measures to enforce them* »;

73. Article 2 of the ICCPR imposes the same obligations on State parties to this Covenant, but specifically provides in paragraph 3 that: « *The State Parties to the present Covenant undertake :*

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation may have been committed by persons acting in an official capacity;

b) To guarantee that the competent judicial, administrative or legislative authority, or any other authority competent under the law of the State, will rule on the rights of the person lodging the appeal and will develop the possibilities of judicial remedy;

c) guarantee that the competent authorities will take appropriate action in response to any appeal that is found to be justified » ;

74. In the light of these provisions, the Court adheres to the position of certain authors who define an effective remedy as being « *a remedy that is not purely formal but offers all the necessary guarantees of effectiveness and some chance of success, a remedy that leads to a decision that can be implemented in practice; an effective remedy is one that enables the person making the request not only to submit it to the competent authority but also to obtain a decision from that authority that can be implemented in practice.* »;

75. The Court points out that the concept of an effective remedy must be assessed in concrete terms. It is therefore not sufficient to say that a legal remedy exists in order to satisfy the requirements of effectiveness and efficiency. The remedy must also be effectively operational;

76. The Court points out that the examination of the effective remedy entails determining the system of national law in order to ascertain whether it provides for competent bodies or institutions available to citizens whose rights have been infringed, and also to ascertain whether those structures are available, functional and effective. The competent authorities must act promptly as soon as the case is brought to their attention;

77. In the present case, the Court notes that the applicants did not lodge a complaint with the State services responsible for the enquiries and investigations, nor did they bring any action before the domestic courts against the defendant to obtain compensation for the damage allegedly caused to them by the acts perpetrated by its agents. Nor do they maintain that the available remedies are not operational;

78. The Court considers that, in those circumstances, the fact that the defendant did not conduct any investigation following the shootings at Makeni is not sufficient to show that this remedy is not effective;

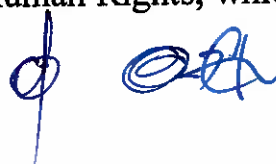
79. Moreover, it should be noted that the judicial organisation of all the signatory States to the ACHPR has provided for courts and remedies against their decisions. As the respondent has set up all the necessary courts, which are functioning and available, the lack of an effective remedy invoked by the applicants is irrelevant;

80. The Court holds that the applicants' right to an effective remedy had not been infringed by the defendant;

81. However, despite the fact that the applicants had not lodged a complaint with the competent authorities for an investigation into the events at Makeni on 17 and 18 July 2020, the Court recalls that international law imposes on States the obligation to conduct investigations whenever the law enforcement organs use lethal force and cause injury or loss of life, with a view to identifying the perpetrators and bringing them to justice;

82. Indeed, the Court notes that the State must take necessary measures to carry out, quickly too, thorough, impartial and transparent investigations on every infringement upon physical integrity, or life of a person, and oblige the perpetrators to answer for their actions, by effecting effective reparation to the victim, including, as it may happen, to his family and other dependants ;

83. The Court points out that this issue is in tandem with the practice in other international courts notably the EU Court of Human Rights, which held in the case



of *Güleç v. Türkiye*, that the general obligation of the State (under Article 1 of the Convention) to « *recognise the rights and liberties of every person living on its territory, as entrenched in the Convention, implies and binds it to carry out an efficient form of official investigation whenever there was the use of force, especially by the State agents, and which leads to loss of life* »;

84. The investigation must enable the State to establish the causes of the harm, to identify and punish the perpetrators. The investigation is of great importance as in the instant case, where there is loss of life, because the main objective that it aims to achieve is to ensure effective application of national laws, which protect the right to life.

Such investigation must be carried out in each circumstance that there is loss of life, following the use of force, whether the perpetrators are state agents or third parties. (Case of Tahsin Acar against Türkiye GC N° 26307/95, § 220, CEDH 2004-III. The investigations must be thorough, deep and impartial;

85. The Court observes that in the instant case, the defendant did not initiate any investigation on the protests by the youth of Makeni, which led to the security agents using force to repress their protests. Thus, the defendant failed to initiate trials before the national courts;

86. The Court holds that there is need to enjoin the defendant to carry out an investigation, with a view to identifying the authors of the incriminated acts, and to bring them to the court, in order for them to answer for their actions.



XII ON THE CLAIM FOR REPARATION FOR THE ALLEGED PREJUDICE SUFFERED

87. The Applicants solicit that may it please the Cour

To order the Defendant to pay Hassan Kargbo the sum of five hundred thousand dollars (500 000 USD) in damages;

To order the Defendant to pay Mohamed Fornah the sum of three hundred thousand dollars (300 000 USD) in damages;

88. *To enjoin the defendant* to take necessary measures to prevent its security agents from having recourse to the use of excessive force in the discharge of their duties, during non – violent demonstrations, especially by way of training and the supply of adequate tools, for their operations ;

To enjoin the defendant to carry out thorough investigation on the incidents that occurred at Makeni, in order to identify the security officers, who used lethal force, and to try them in court;

To grant them any other reparation that the Court may deem necessary and appropriate:

ANALYSIS BY THE COURT

89. The Court recalls that its human rights violation jurisdiction allows it, not only to find the said violations, but also to order reparation, if there is need for it;

90. The Court notes that it is admitted in international law that every violation of an international human right protection instrument gives rise to the obligation for



reparation of the prejudice caused to the victim of the violation. The Judgment of the Court in the case of HEMBADOON CHIA AND 7 OTHERS v. FEDERAL REPUBLIC OF NIGERIA ANOR ECW/CCJ/JUD/21/18 PAGE 33 remains a good illustration;

91. The Court points out that a State is bound to effect an integral reparation of the prejudice suffered following the violation of the rights that are internationally recognised, and for which the state is liable. The reparation may take diverse forms, notably the re – establishment of the victim in his/her original situation, if possible, compensation, satisfaction, i.e the recognition of the violation or apology for it. In this regard, Judgment MOUKHTAR IBRAHIM v. JIGAWA STATE GOVERNMENT AND 2 ORS (ECW/CCJ/JUD/12/14, PAGE 40) can be usefully referred. See also Judgment HAMMA HIYA ANOR v. STATE OF MALI, JUDGMENT N°. ECW/CCJ/JUD/05/21 PARAGRAPH 64;

92. The Court equally recalls that granting of reparations is conditioned by the establishment of a causality link between the found violation and the prejudice caused to a victim, and for which reparation is sought. In this regard, the Court held that: « To claim the status of *victim*, there must be a link between the Applicant and the alleged violation, i.e. there must exist concrete facts demonstrating that the Applicant really suffered directly a prejudice, or a loss that is directly as a result of the actions the defendant, and for which the latter is liable. »;

The Court has so held in the case of SAWADO GO PAUL and 3 ors v. REPUBLIC OF BURKINA FASO ECW/CCJ/JUD/07/20 PAGE 10;

93. The Court admits that compensation can be granted regarding material and moral prejudices. In regard to damages, in reparation for a pecuniary prejudice suffered, it is awarded for a tangible prejudice, a loss that can be evaluated in terms of money. When payments for pecuniary prejudices are sought, the victim or the Applicant

must show documentary proof of the loss suffered, especially receipts of payments, proof of ownership of goods and properties, proof of employment and pay slips, medical certificates or expert documents issued etc.;

94. Non pecuniary or moral damages, as they are called often, aim to compensate the victims for their sufferings, especially psychological prejudice, anguish, pain, sorrow, distress, fear, frustration, anxiety, disagreements, humiliation or infringement upon reputation caused by the violation, as was the case in the procedure of THE HEIRS OF THE LATE NORBERT ZONGO AND 4 OTHERS v. BURKINA FASO;

95. In the instant case, in support of their claims, the Applicants attached witness statements in the case file, as annexure to the initiating Application;

96. In regard to the proof attached, since the Court has conclude above that the defendant has violated the Applicants Hassan Kargbo and Mohamed Fornah's rights to security of person, the Court can only adjudicate on their claim for damages as well - founded;

97. Nevertheless, the Cour holds that the claim, by the Applicants, on reparation is exaggerated in its quantum, as there is needx to brin git down, to the just proportions, in taking into account the attached justifying proof, to fix the amount at fifteen thousand dollars (15 000 USD) for each of the two;



XIII. AS TO COSTS

98. Under Article 66 (2) of the Rules of Court, the unsuccessful party is ordered to bear the costs, if this has been requested by the opposing party. The Court notes that the Applicants did not conclude in this regard.

Consequently, the Court declares that each party shall bear its own costs.

FOR THESE REASONS

The Court,

Sitting in a virtual public hearing and having heard the Applicants:

Adjudicating in a default judgment in regard to the Defendant State;

On jurisdiction

Declares its jurisdiction over the instant case;

On admissibility

Declares the initiating Application filed as inadmissible, in regard to Applicants Abibatu Sesay, Momoh Tholley, Alimamy Sillah, Alie Abdul Kamara, Joseph Kargbo and Alfred Jalloh, for lack of quality to act ;

On the contrary, declares the initiating Application filed as admissible, in regard to Applicants Hassan Kargbo and Mohamed Fornah;

As to merits

Declares that the defendant has not violated the Applicants' right to effective remedy;



Declares equally that the defendant has not violated the Applicants Hassan Kargbo and Mohamed Fornah's right to life;

Declares, on the contrary, that the defendant violated the Applicants Hassan Kargbo and Mohamed Fornah's right to security of person;

Orders the defendant to pay to each of Hassan Kargbo and Mohamed Fornah the sum of fifteen thousand dollars (15 000 USD) as damages;

Enjoins the defendant to take necessary measures to prevent the recourse to the use of force, by its security officers, when managing peaceful demonstrations;

Enjoins the defendant to carry out an investigation on the incident that occurred at Makeni, in order to identify the authors and prosecute them in a criminal proceedings;

AS TO COSTS

Declres that each party shall bear its own costs.

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

AND THE FOLLOWING HAVE APPENDED GHEIR SIGNATURES

Hon. Judsge Ricardo Cláudio Monteiro GONÇALVES Presiding

Hon. Judge Gberi-bè OUATTARA

Member/ Judge Rapporteur

Hon. Jugde Amoako Edward ASANTE

Member

ASSISTED BY: Me. Aboubakar Djibo Diakité

Registrar

