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

In the Case of

KINSOUGBO AMELE against the REPUBLIC OF TOGO.

Suit No: ECW/CCJ/APP/31/22 *Judgment No. ECW/CCJ/JUD/38/25*

JUDGMENT

ABUJA

7th July 2025

SUIT N°: ECW/CCJ/APP/31/23

JUDGMENT N°: ECW/CCJ/JUD/38/25

KINSOUGBO AMELE **APPLICANT**

V.

THE REPUBLIC OF TOGO **DEFENDANT**

BEFORE THEIR LORDSHIPS:

Hon. Justice **Ricardo** Claúdio Monteiro **GONÇALVES** -President

Hon. Justice Sengu **Mohamed** KOROMA - Member

Hon. Justice GBERI-Bè **OUATTARA** - Judge Rapporteur/Member

ASSISTED BY: Dr. Yaouza **OURO-SAMA** - Chief Registrar

I. *REPRESENTATION OF PARTIES:*

The Professional Society of Lawyers (SCPA) Femiza and Associates
Lawyers at the Bar Association of Lomé in Togo Lawyers of the applicant

Minister of Justice
Legal representative of the Republic of Togo Lawyer for the defendant

II. *JUDGEMENT OF THE COURT*

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

III. *DESIGNATION OF THE PARTIES*

1. The Applicant is:

Kinsougbo AMELE, a citizen of Togo and mother of the minor child AMEKEYA Mathias (hereinafter referred to as "the applicant").

2. The defendant is the Republic of Togo, a Member State of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments on the protection of human rights (hereinafter referred to as "the defendant").

IV. *INTRODUCTION*

3. The purpose of this proceeding is to examine the application in which the applicant seeks a finding that the defendant violated the relevant provisions prohibiting torture and inhuman or degrading treatment, failed to respect the principle of the best interests of the child, and violated the right to life, the right to physical integrity, the right to enjoy the highest attainable standard of health, and the right to lead a decent life;

V. *PROCEDURE BEFORE THE COURT*

4. On 4 July 2022, the applicant filed an application with the Court against the defendant for violation of the human rights of her son, AMEKEYA Mathias.
This application was served on the defendant on 06 July 2022.

5. On 6 June 2023, the applicant filed a certificate of non-filing of a defence brief with the registry, which was forwarded to the judge-rapporteur;

6. On 30 January 2024, the applicant filed an application with the registry for a judgment by default. This application was served on the defendant on 31 January 2024;

7. On 23 February 2024, the defendant filed a motion with the registry requesting an extension of time.

This claim was served on the defendant on 3 February 2020. On the same day, the applicant stated that she did not object to the Court granting the extension of time requested by the defendant.

The applicant's response was notified to the defendant on 27 February 2024.

8. On 22 April 2024, the defendant filed a statement of defence at the Registry. The said brief was served on the applicant on the following day, 23 April 2024.

9. Having thus completed the written phase of the proceedings, the Court held a hearing on 13 November 2024 to proceed with the hearing of the parties. At this hearing, the applicant was represented by her lawyer who argued the case on the merits. The Defendant was absent and not represented. At the conclusion of the applicant's pleadings, the Court reserved its decision.

VI. *THE ARGUMENTS OF THE APPLICANT*

a) *Summary of facts*

10. By application lodged at the Registry of the Court on 4 July 2022, Kinsougbo Amélé, a citizen of Togo, brought proceedings before the Court against the Republic of Togo on behalf of her son, Amekeya K. M. Mathias.

The applicant alleges that the defendant violated her son's fundamental rights as enshrined in Articles 3 and 5 of the Universal Declaration of Human Rights (UDHR), 2. 1, 3.1, 6, 19, 23(1)(2), 24, 37(a) and 39 of the Convention on the Rights of the Child (CRC), 3(h), 7, 10, 15 and 25 of the Convention on the Rights of Persons with Disabilities (2005), 5, 14 and 16 of the African Charter on the Rights and Welfare of the Child (ACRWC), 4, 5 and 6 of the African Charter on Human and Peoples' Rights

(ACHPR), 7 and 24.1 of the International Covenant on Civil and Political Rights (ICCPR). She also alleges a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. The applicant states that on 22 October 2017, at around 11 p.m., after cooking, she lay down in the mosquito net next to her son Amekeya Mathias and her daughter, at the place where she sells food.

12. She explains that around 2 a.m., she was awakened by the sounds of a fighting and noticed a crowd about a hundred meters from where she and her children were lying.

13. She states that, having approached to find out the cause of all the commotion, she understood that it was a fight between two law enforcement and security officers and a group of local youths.

14. According to her, as she went back to bed, she saw a green military van (DAF) arrive carrying a group of law enforcement and security officers. The vehicle stopped not far from where her son Amekeya Mathias was sleeping, while her daughter had woken up and joined her.

15. She maintains that law enforcement and security officers jumped out of the van and began throwing tear gas grenades to disperse the crowd gathered at the scene of the fight. This is how one of the officers sprayed tear gas into the mosquito net under which his son was lying. This prompted one of the officers to spray tear gas into the mosquito net under which his son was lying. Another officer approached her to beat her with his baton. To protect herself, she ran away with her daughter to a nearby house.

16. The applicant claims that the law enforcement and security officer then went to the mosquito net and fired tear gas a second time.

She stated that her son Amekeya Mathias could only be rescued after the law enforcement and security officers left some 20 minutes later.

17. She reported that she found her son lying in a pool of blood and crying, with wounds all over his body and his face and left forearm completely torn apart.

18. The applicant goes on to say that, after being transported to the University Hospital Centre (CHU) in Lomé Tokoin, her son Amekeya Mathias had his left forearm amputated and is now permanently disabled and dependent on others for many of his needs. She added that he is suffering from psychological trauma because he regularly wakes up screaming in the middle of the night and has to endure daily taunts from his schoolmates and neighbours because of the consequences of the violence he suffered.

19. The applicant concludes that, in view of the facts and the actions of the law enforcement and security officers, she wants justice to be done for her son and the perpetrators of these acts to be found and punished.

b) *Pleas - in - law relied on*

20. The applicant relies on the following pleas in law:

- Violation of Articles 3 and 5 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948;

- Violation of Articles 2 paragraph, 1, 3, 6, 19, 23, 24? 37 and 39 of the International Convention on the Rights of the Child of 1989;

- Violation of Articles 3(h), 7, 10, 15 and 25 of the 2005 Convention on the Rights of Persons with Disabilities;

- Violation of Articles 5, 14 and 16 of the African Charter on the Rights and Welfare of the Child of 1990;

- Violation of Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights (ACHPR) of 27 June 1981;

- Violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

- Violation of Articles 7 and 24, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966;

(c) ***Orders sought***

21. The applicant requests that the Court declare and adjudge:

-That the actions of law enforcement and security agents constitute acts of torture and ill-treatment in violation of the provisions of Articles 4 and 5 of the African Charter on Human and Peoples' Rights of 27 June 1981; Article 16 of the African Charter on the Rights and Welfare of the Child; Article 5 of the Universal Declaration of Human Rights of 10 December 1948; Article 7 of the International Covenant on Civil and Political Rights of 16 December 1966; and all the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

- That the actions of the State agents constitute a violation of the principle of the best interests of the child as well as the duty of the State to protect the family unit;

- That the defendant has thus violated the provisions of Articles 2 and 3(1) of the 1989 International Convention on the Rights of the Child, Articles 4 and 18 of the 1990 African Charter on the Rights and Welfare of the Child;

- That the defendant, through the actions of its agents, violated the right to physical integrity and the highest attainable standard of health of the child AMEKEYA K. Mr. Mathias, in violation of the provisions of Article 6 of the 1989 International Convention on the Rights of the Child, Article 10 of the 2005 Convention on the Rights of Persons with Disabilities, and Articles 5(1) and 14 of the 1990 African Charter on the Rights and Welfare of the Child;

- That the rights of the victim continue to be violated as long as the defendant does not assume responsibility for the child's disability and does not undertake to implement the care measures prescribed by Article 24(1) of the International

Covenant on Civil and Political Rights of 16 December 1966, Article 23(1 and 2 of the International Convention on the Rights of the Child of 1989; Article 13 of the African Charter on the Rights and Welfare of the Child (1990), and the provisions of the Convention on the Rights of Persons with Disabilities (2005).

Consequently,

- Order the Republic of Togo to carry out an investigation to arrest the culprits of the incriminated acts, in accordance with the provisions of Article 12 of the Convention against Torture of 10 December 1984 and with due regard to their seriousness pursuant to Article 4 of the same Convention;

- Order the defendant to compensate for the damage suffered, while bearing in mind the relevant provisions of the Convention against Torture, in particular Article 14, as well as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the United Nations General Assembly on 16 December 2005 in its Resolution 60/147, in particular in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

-Order the defendant to pay him the sum of one hundred million (100,000,000) CFA francs in damages, in accordance with the provisions of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984, and Article 9-5 of the International Covenant on Civil and Political Rights of 16 December 1966.

- Order the defendant to pay the costs pursuant to Article 66 et seq. of the Rules of Court.

VII. ARGUMENT OF THE DEFENDANT

a) Summary of the facts

22. The defendant, who did not consider it necessary to re-examine the applicant's account of the facts in order to present his own version, nevertheless requests that the ECOWAS Court dismiss all of the applicant's claims as unfounded.

b) *The Pleas-in-law relied on*

23. The defendant relies on the following plea in law:

- Absence of violation of the rights relied on by the applicant;

(c) *Orders sought*

24. Consequently, the defendant requests that may it please the Court:

- Declare and adjudge that it did not violate any of the rights invoked by the applicant;

- Reject all of the Applicant's claims, purposes and submissions as ill-founded;

- Order the applicant to bear the entire costs.

VIII. *JURISDICTION*

25. The Court points out that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court of Justice, which provides that: "*The Court shall have jurisdiction to determine cases of human rights violations that occur in any Member State*".

26. The Court notes that the rights invoked by the applicant, namely the violation of the right to life, the right to physical integrity, torture and inhuman or degrading treatment, failure to respect the principle of the best interests of the child, the right

to enjoy the highest attainable standard of health and the right to lead a decent life, are among the human rights falling within its jurisdiction.

27. As the defendant is an ECOWAS Member State, all the conditions are met for the Court to retain jurisdiction in accordance with its settled case law.

IX. *ADMISSIBILITY*

28. The Court notes that the admissibility of applications before it is governed by the provisions of Article 10-d of 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: "Any person who has suffered a violation of human rights may apply to the Court;*

29. In the present case, the respondent argues that the application is inadmissible because the applicant did not exhaust local remedies and, moreover, does not have the status of victim of a human rights violation.

30. With regard to the obligation to exhaust local remedies, the defendant asserts that this condition is a procedural rule of international law according to which, before bringing a case before an international court, the applicant is required to exhaust all remedies available to him before the national courts (AHPR, case of *Sébastien Germain Ajavon* v. *Benin*, No. 013/2017, 29 March 2019).

31. As the jurisprudence of the African Court on Human and Peoples' Rights makes clear, when applying the rule of exhaustion of local remedies, the following three criteria must be considered: the availability, effectiveness and satisfactory nature of these remedies (Article 56(5) of the African Charter on Human and Peoples' Rights). It explains that in the case of Norbert Zongo and others v. Burkina Faso, for example, the Court stated that "the effectiveness of a remedy is its ability to remedy the situation complained of by the person who invokes it."

32. In the present case, the applicant, Kinsougbo Amélé, brought an action directly before the ECOWAS Court of Justice for the alleged violation of her son's rights, without first bringing the matter before the competent national authorities in order

to obtain justice for her child. She therefore failed to comply with the rule of exhaustion of local remedies.

33. The defendant points out that, although before the ECOWAS Court of Justice this rule tends to be interpreted more broadly and flexibly than strictly or restrictively, in favour of victims of alleged human rights violations, the applicant was required to first bring her case before the national courts to seek redress for the specific harm allegedly suffered and caused by the State before bringing the matter before the Court at this Court. This was not done.

34. It asserts that there is no evidence that local remedies were unavailable or difficult to access to the extent that they could not be exhausted, or that the domestic legal system does not offer real prospects of success without undue delay or of effectiveness.

35 Finally, it argues that it is clear that the rule of exhaustion of local remedies makes it possible to determine whether a State adequately protects human rights within its territory. It goes without saying that this rule is designed to protect the sovereignty of states and must therefore be interpreted more or less strictly;

36. The defendant concluded that the applicant Kinsougbo Amele did not exhausted local remedies, her application must be declared inadmissible for failure to exhaust remedies.

37. The applicant submits that pursuant to the provisions of Articles 9.4 and 10 of its Supplementary Protocol, "*The Court has jurisdiction to hear cases of human rights violations that occur in any Member State*. Access to the *Court is open to the following: Individuals on application for relief for violation of their human rights.* ».

38. She considers that the provisions of Article 10(d) (ii) of the 2005 Supplementary Protocol do not require the prior exhaustion of local remedies before applying to the Court.

According to her, human rights are inherent to the human person and are therefore "*inalienable, imprescriptible, and sacred,*" and cannot therefore be subject to any limitation whatsoever.

Consequently, the applicant requests that her application be declared admissible.

ANALYSIS OF THE COURT

39. The Court recalls that in numerous cases, States have relied on the non-exhaustion of local remedies to argue that applications alleging violations of human rights brought against them before the Court are inadmissible. In response to this argument, the Court has consistently held that the exhaustion of local remedies is not applicable before it. (See, Judgment ECW/CCJ/JUD/06/08, *Hadijatou Mani Koraou v. Republic of Niger,* Reports (2004-2009), pp. 234 and 235, §§36-40; Judgment ECW/CCJ/RUL/04/09, *Musa Saidykhan v. The Gambia,* Reports (2010) @ pg. 156

40. Furthermore, the case law of the African Court on Human and Peoples' Rights cited to justify the existence before this Court of the procedural rule of exhaustion of local remedies is not relevant insofar as this requirement is expressly enshrined in the procedural texts of the African Court on Human and Peoples' Rights, which are not applicable before this Court.

The Court therefore finds that the argument that local remedies have not been exhausted is ineffective and cannot justify the inadmissibility of the application; it must therefore be rejected.

41. With regard to the lack of victim status, the defendant argues that it is settled case law that the applicant may be considered a victim if there is a sufficiently direct link between him and the alleged violation. It states that in order for the applicant to claim that her child is a victim, she must provide reasonable and convincing evidence of the likelihood of a violation in relation to him personally, and that "mere suspicions or conjectures are insufficient in this regard" (see CCJ ECOWAS, Hissein Habré v. Republic of Senegal, judgment of 18 November 2010).

42. The defendant maintains that these events occurred during a fight between law enforcement officers and a group of local youths, as indicated by the applicant. There is no evidence to suggest that the child Mathias's injuries are directly linked to the actions of the agents of the Republic of Togo, let alone that they constitute torture or other violations cited by the applicant.

43. The defendant further considers that the applicant does not substantiate her allegations, but merely produces a medical certificate to conclude that there has been inhuman and degrading treatment, violations of the right to life, failure to respect the principle of the best interests of the child and the protection of the family. It recalls that the Court has repeatedly emphasized the need for the applicant to substantiate the allegations made before it with evidence.

44. It maintains that the applicant did not provide any evidence to support her allegations of a fight, the presence of law enforcement officers, and the use of tear gas on her son under the mosquito net, and that the initial medical certificate on which the action is based actually contradicts the allegations made by the applicant.

45. Indeed, the defendant alleges that the applicant states that she was lying under a mosquito net with her children at the place where she sells food in Zéyi (Afangnan) (i.e. on the street), the original medical certificate states that the child was "lying on his bed at home" in Assivito when he was fired with tear gas; It appears that the applicant is not credible and does not have the necessary standing to bring a case before this Court.

The defendant requests that it please the Court, to declare it inadmissible in his application for lack of standing as a victim of human rights violations.

46. The applicant submitted her son AMEKEYA Mathias' birth certificate to the case file, which shows that she is his biological mother and that he is still a minor.

47. The Court notes that the defendant's argument regarding the applicant's lack of victim status is based on the alleged absence of proof that the harm to the child Amekeya Mathias was indeed caused by the actions of law enforcement officers.

48. It notes that, according to the defendant, Kinsougbo Amélé, the mother of the injured child, did not establish beyond doubt that it was the acts committed by its agents on 22 October 2017 that caused the serious injuries to the child's body, face, and forearm, leading to the amputation of that part of his body, causing lifelong disability to Amekeya Mathias, born on 24 November 2009 and therefore eight (08) years old at the time of the events.

49. The Court finds that it actually argues that there is no proven causal link between the actions of the agents and the harm suffered by the child. In fact, the defendant highlights the contradiction between the location where the events took place according to the applicant (Zéyi, Afangnan) and the location as attested by the medical certificate produced by the latter (Assivito).

50. The Court recalls that the *initial medical certificate* submitted to the file by the applicant was issued on 7 October 2021 by Dr Sassil Dare, a surgeon at the *Sylvanus Olympio University Hospital Center (CHU)* in Lomé, Togo. It states the following:

"I, the undersigned, Dr. Dare Sassil, surgeon, certify that I have received and examined the aforementioned Amekeya Mathias, aged 11, a student in the fourth grade residing in Djévi (Afagnan), at the surgical emergency department for multiple injuries associated with a severe wound extending from the distal end to the dorsal surface of the left forearm caused by a tear gas explosion that occurred on 22 October 2017 at his home in Assivito.

The patient was in bed at home or during a fight between the army and civilians, tear gas was fired, which exploded in the patient's hand on his bed. He was consulted in the surgical emergencies of the Sylvanus Olympio Hospital Center for his care ".

51. The Court notes that the applicant stated in her application, without further clarification, that she was at the place where she conducts her business when the events occurred. The medical certificate states that, four years after these events, the child Amekeya Mathias resides in Djévi (Afagnan) and that the tear gas explosion took place at his home in Assivito on 22 October 2017.

52. The Court notes that the assertion that it is in Djévi (Afagnan) that the applicant sells food is an assertion made by the defendant. It is not corroborated by the statements of the applicant or by the medical certificate.

53. The Court notes that, on the contrary, the medical certificate attests, until proven otherwise, that the child Amekeya Mathias did indeed suffer multiple injuries associated with a devastating wound to the distal end of the left forearm extending to the dorsal surface of the hand as a result of tear gas explosion on 22 October 2017 at his home in Assivito. This Court notes that, in recounting the circumstances in which the unfortunate event occurred, the doctor stated that it took place during a clash between members of the army and a group of civilians and that, following the incident, the child was admitted to the surgical emergency department of the Sylvanus Olympio University Hospital for treatment.

54. The Court notes that the medical certificate shows that it was indeed the explosion of tear gas during a clash between the army and civilians that caused the child Amekeya Mathias to suffer multiple injuries leading to the amputation of his left forearm. This single fact—that the disability was caused by the explosion of tear gas—takes precedence over any controversy that may exist regarding the location where the incident occurred. Moreover, Togo does not conclusively refute that a fight broke out between young people and the police on the date indicated, or that its agents used tear gas on that occasion.

55. The Court concludes that the child Amekeya Mathias is indeed the victim of the acts attributed to the agents of the defendants, which constitute the alleged human rights violations. The applicant, Kinsougbo Amélé, whose relationship to the minor child is established by the birth certificate, a copy of which was produced, has standing to act on behalf of her son, who is the victim of the alleged human rights violations.

56. The Court reiterates that, apart from the requirement that the applicant must have the status of victim, the application itself must satisfy other conditions in order to be admissible. It is indeed clear from the provisions of Article 10 d cited above that:

The application submitted for this purpose shall:

i) not be anonymous nor;

ii) *be made whilst the same matter has been instituted before another International Court for adjudication* ".

57. In the present case, the Court notes that the applicant is well identified. This is Kinsougbo AMELE. The application is therefore not anonymous.

58. Furthermore, there is no evidence that the applicant has referred the same case to another international court with jurisdiction in human rights matters. In these circumstances, in accordance with its established jurisprudence, the Court has no option but to declare the application admissible insofar as it meets all the formal requirements.

X THE MERIT OF THE CASE

59. The applicant alleges torture and other cruel, inhuman, and degrading treatment or punishment (A), failure to respect the principle of the best interests of the child and the protection of the family (B), violation of the right to life, physical integrity, and the right to enjoy the highest attainable standard of health (C), and violation of the right to a decent life, to the full enjoyment and development of the child (D).

Before any decision, the Court will examine successively all the claims of the applicants.

A TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

60. The Applicant alleges violation of Articles 4 and 5 of the African Charter on Human and Peoples' Rights, Article 16.1 of the African Charter on the Rights and Welfare of the Child, Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 37 (a) of the Convention on the Rights of the Child. It also alleges a violation of the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without indicating which of these provisions are relevant.

61. The Applicant also refers to the relevant articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the exception of Article 4 of the African Charter on Human and Peoples' Rights on respect for the right to physical and moral integrity of the person, the provisions of all the instruments cited relate to the prohibition of torture, cruel, inhuman or degrading treatment or punishment.

62. The defendant argues that it is in vain that the applicant displays a litany of texts and conventions on torture and other cruel and inhuman treatment, especially since no evidence of any act of any element of security force and order is reported in this case.

63. It added that it was clear from the provisions of article1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that torture was physical suffering inflicted on a person, in particular for the purpose of making him confess what he refused to reveal.

64. To be classified as inhuman and degrading treatment, an act must meet the criteria for moderate forms of physical violence or corporal punishment, with the aim of extracting information.

65. The defendant claimed that this was not the case in the present case where even the materiality of the alleged facts is not established since the applicant is satisfied with a narrative of imaginary facts; that the Court cannot assess facts that are not established.

66. The defendant argued that the mere fact that the applicant claimed that the actions of the law enforcement officers constituted inhuman and degrading treatment did not constitute material evidence of the alleged facts and actions, and that the medical certificate produced by the applicant never mentioned that the child Amekeya K. M. Mathias was subjected to acts of torture. The circumstances and place where the child was injured remain undetermined;

67. The defendant concluded that the applicant did not provide evidence to support her allegations and that, in accordance with its own case law, in the absence of formal evidence, the Court would easily find that the child Amekeya K. M. Mathias was not the victim of any act of torture attributable to an agent of the Republic of Togo, and that in view of all the foregoing, all the arguments based on the violation of the various articles relied upon are unfounded.

ANALYSIS OF THE COURT

68. The Court nots that it is common practice for a State to refer to several legal instruments in relation to the same substantive right. With regard to torture, the Court recalls the definition given in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is a specific convention. Article 1 (1) of the said instrument provides:

"For the purposes of this Convention, the term 'torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of, inter alia, obtaining information or a confession from him

or a third person, punishing him for an act he or a third person has committed or is suspected of having committed, to intimidate or coerce her or intimidate or coerce 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. Both these functions and the conduct of prosecutions at trial must be done effectively, with adequate qualifications and resources, free from corruption and interference".

69. The Court notes that, in addition to the legal and material elements, there is also the moral element, namely the deliberate intention to inflict severe pain or suffering in order to obtain a confession, punish, intimidate or exert pressure, which characterizes torture. This allegation is made in connection with the facts described by the applicant and set out in paragraph 3 of this note.

70. The Court finds that the facts as presented do not indicate that there was a deliberate intention to inflict severe pain or suffering on the child Amekeya Mathias. Moreover, the operation took place in the middle of the night, at around 2 a.m., and it has not been established that the officer who fired two shots at the mosquito net, according to the applicant, acted knowing that an eight-year-old child was inside and that he did so with the intention of deliberately causing severe pain or suffering, obtaining a confession, punishing or intimidating.

The Court therefore holds that in the absence of the moral element, the allegation of torture cannot be upheld.

71. The Court notes, however, that, as it has already had occasion to do in its judgment of 10 July 2024 in the case of ECW/CCJ/JUD/29/24, *Obianuju Catherine Udeh and 2 others v. Federal Republic of Nigeria*, unpublished, p. 38, § 119, it distinguishes between "torture" and "cruel, inhuman or degrading treatment."

72. The Court notes that if, in assessing the acts committed by the defendant, it appears that torture was not established, this does not necessarily mean that there was no cruel, inhuman or degrading treatment. The Court considers that, based on

the same facts, it is possible to assess separately the allegation of cruel, inhuman, or degrading treatment, acts which do not require an intention to obtain a confession, to punish, intimidate, or exert pressure on the victim.

73. However, the facts alleged by the applicant and corroborated by photographic evidence attest to the seriousness of the treatment inflicted on the victim, who was eight years old at the time.

74. The Court notes that when AMEKEYA Mathias was evacuated to the SYLVANUS OLYMPIO University Hospital Centre in LOME, Dr DARE Sassil, the surgeon who received and examined him, certified that AMEKEYA Mathias had the following injuries:

- Poor general condition, Pulse =1 ppm, respiratory rate =24 ccp;
- Good state of consciousness Glasgow:15/15
- Decaying haemorrhagic wound from the distal end of the left forearm to the dorsal side of the hand exposing all severed tendon and bone elements;
- Bleeding wound in the left shoulder and left arm;
- Haemorrhagic wound in the right shoulder and right arm;
- Shallow haemorrhagic wound on the anterosuperior side of the thorax;
- Presence of numerous bleeding wounds on the head with rhinorrhagia;
- Jugular wound.

75. The doctor concluded that the patient was the victim of trauma caused by tear gas explosion and presented a devastating wound covering the left forearm and hand with osteotendinous lesions and vascular nerve damage associated with multiple haemorrhagic wounds affecting the chest, face, shoulders, and arms, leading to amputation.

He estimated temporary incapacity for work (ITT) at ninety days unless further complication.

76. The Court concludes, in light of all of the above, that the child AMEKEYA Mathias was undoubtedly the victim of cruel and inhuman treatment and that, consequently, the defendant violated Article 5 of the ACHPR.

B ALLEGED FAILURE TO RESPECT THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD AND PROTECTION OF THE FAMILY

77. The Applicant alleges the violation of Articles 2.1 and 3.1 of the Convention on the Rights of the Child and Article 4.1 of the African Charter on the Rights and Welfare of the Child. She alleges that the defendant violated the principle of the best interests of the child.

78. The defendant countered that the Applicant did not provide evidence of any violence by law enforcement against her son. It points out that the applicant stated in her application initiating proceedings that she got up from where she was lying with her children and approached the place where the fight was taking place to find out what was causing all the commotion.

79. The defendant argues that even if there was a fight, it was the applicant, the mother of the child Mathias, who failed to respect the best interests of her child and thus failed in her duty to protect her children, since instead of ensuring their protection and shelter her children, knowing full well that there was a fight and that it could escalate at any moment, she left her children asleep in the street in the middle of the night and chose to go to the scene of the fight to find out what was happening, even though she was not involved.

80. The defendant considers that the duty to ensure the safety, well-being, and interests of the child, and to protect the child, lies primarily with the parents, in particular with the mother who was with the children. It attempts to cast doubt on the applicant's version of events by suggesting that the child could have followed his mother to the scene of the gathering, as did his sister, whose mother noticed her presence when she joined the crowd.

81. It concludes that the applicant is mistaken, as there is nothing in the file to establish that any member of the law enforcement authorities violated the best interests of her child.

ANALYSIS OF THE COURT

82. The Court recalls that Articles 2.1 and 3.1 of the Convention on the Rights of the Child and Article 4.1 of the African Charter on the Rights and Welfare of the Child relied upon by the applicant respectively provide:

Article 2.1 of the Convention on the Rights of the Child:

"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

Article 3.1 of the Convention on the Rights of the Child:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Article 4.1 of the African Charter on the Rights and Welfare of the Child:

"In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration".

83. The Court notes that the best interests of the child is a concept that has no strict definition to date but is based on Article 3 of the 1989 International Convention on the Rights of the Child.

84. The Court notes that a reading of the provisions of the aforementioned articles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child clearly shows that it is when taking any decision concerning a child that the judicial or administrative authorities of States that have ratified the

Convention have an obligation to take into consideration the best interests of the child.

85. The Court notes that the use of this concept essentially calls upon the subjectivity of the person making the decision concerning the child. For example, according to Article 9 of the Convention on the Rights of the Child, a child has the right to live with his or her parents. However, it may be separated from it in accordance with a court decision, provided that such decision is taken in accordance with the child's best interests. This situation may arise when a child is a victim of abuse or neglect.

86. The Court recalls that in its judgment ECW//CCJ/JUD/12/20 of 8 July 2020, Ajami Yasmine Marie Jeanne v. Côte d'Ivoire (unpublished), it discussed at length the concept of the best interests of the child (see, in particular, §§292-301 of the aforementioned judgment). This implies that when this principle is applied, it is because the act, decision, or action in question concerns the child. However, in this case, it is difficult to argue that the police raid constituted an action or decision concerning a child or children. The objective of this operation was not the situation of the child Amekeya Mathias or even of any child. The officer who fired tear gas into the mosquito net was unaware that the child Amekeya Mathias was present.

The Court therefore concludes that the allegation of a violation of the principle of the best interests of the child is unfounded.

87. With regard to the protection of the family, the Court notes that such protection aims to ensure that the fundamental needs of the child are met, to support his or her physical, emotional, intellectual, and social development, and to preserve his or her health, safety, morality, and education, with respect for his or her rights.

88. The Court finds that, in the present case, the son of the applicant was the victim of the collateral effects of a police operation and not of a measure taken by the defendant in violation of his rights.

The Court therefore finds that there was no violation of the right to protection of the family.

C ON THE VIOLATION OF THE RIGHT TO LIFE, THE RIGHT TO PHYSICAL INTEGRITY AND THE RIGHT TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH

89. The applicant argues that by causing permanent disability to the child Amekeya Mathias, the defendant deprived him of his right to enjoy his life in full freedom. It maintains that, through the actions of its agents, the defendant endangered the right to life and physical integrity of this child, who is now permanently disabled in his left hand. The Court declares that these acts endangered the person of the child Amekeya K. M. Mathias by causing the amputation of his left forearm, a traumatic event that led to psychological disorders, and that the defendant ultimately violated the child's right to enjoy the best possible state of health.

90. The defendant asserts that the applicant is engaging in "nonsense" with regard to the alleged violation of Articles 10 and 25 of the 2005 Convention on the Rights of Persons with Disabilities, since it is clear that the aforementioned provisions are only applicable to persons living with disabilities. The defendant argues that it is clear from the applicant's account of the events that Amekeya K. M. Mathias was not disabled at the time of the alleged incidents and that his disability arose as a result of them.

91. The defendant raises the question of how law enforcement and security personnel could have violated the rights of a disabled person when, according to the mother herself, the child in question had no disability at the time of the incident. It states that this reality attests to the blatant bad faith and lack of seriousness of the applicant, who cites a mixture of legal provisions and instruments for the protection of human rights without understanding their meaning. It argues that, ultimately, the violation of Articles 10 and 25 of the 2005 Convention on the Rights of Persons with Disabilities exists only in the applicant's mind, as reflected in the facts she is attempting to fabricate. It then concludes that the alleged rights were not violated.

ANALYSIS OF THE COURT

92. The Court notes that the right to life is undoubtedly the most important human right, since it is its effectiveness that makes it possible to enjoy the other rights inherent to the human person. Without the right to life it is not possible to enjoy other human rights. It is so important that virtually all international human rights protection mechanisms contain at least one provision devoted to it.

93. The Court emphasizes that Article 4 of the African Charter on Human and Peoples' Rights (ACHPR) provides that "*the human person shall be inviolable. "Every human being has the right to respect for his life and to the physical and moral integrity of his person: No one shall be arbitrarily deprived of this right".*

- Article 3 of the Universal Declaration of Human Rights (UDHR) states 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 to the human person. No one shall be arbitrarily deprived of his life".* To all these provisions must be added those of Article 2 paragraph 1 of the European Convention on Human Rights (ECHR) which provides that "*everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*

94. The Court notes 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. This is one of the reasons why paragraph 2 of Article 2 of the ECHR provides that "*homicide shall be considered as lawfully committed only in cases 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."*

95. The Court notes that taking another person's life unquestionably constitutes a violation of his right to life. Thus, in the case of Khamila Issaieva v. Russia of 15 November 2007 concerning the disappearance of Mr Issaïev during an operation in Chechnya, the European Court of Human Rights found that there was a violation of the right to life following his death.

96. The Court notes that the duty of the State to protect the right to life requires law enforcement officials to use force only as a last resort. This is especially important during the policing of protests. Thus, in the case of George Iyanyori Kajikabi v. Egypt, the African Commission stated that:

"[F]orce may be used in law enforcement only in order to stop an imminent threat" of death or serious injury. *Force in this context includes deadly force but also any other lesser form, and while preference should be given to weapons less likely to cause death or serious injury, even such weapons can cause death or serious injury if they are abused."*

97. The Court reiterates that States have a duty to protect life and that failure to comply with this obligation may result in the State being ordered to pay damages to the beneficiaries of deceased victims. Thus, following the death of a prisoner in prison, the Human Rights Commission concluded that Cameroon violated the prisoner's right to life by allowing the uncontrolled spread of potentially fatal diseases, including meningitis and cholera, in the detention centre. (Titiahonio v. Cameroon case, HRC, General Comment No.6, HRI/GEN/1/Revue 1 to 6, para. 5).

98. Similarly, in the case of Asive Genc v. Turkey, in which the applicant claimed that Turkey violated the right to life of her premature baby who died due to a 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 was the victim of a malfunction of the hospital services in that it was denied any access to appropriate emergency care.

99. In the present case, in view of the documents in the file, it appears that the applicant's son is still alive; the Court finds that she cannot validly argue in these circumstances that there has been a serious and irreversible violation of his right to life. It follows that the defendant did not violate the right to life of the child AMEKEYA Mathias.

100. With regard to the violation of the right to physical integrity, the Court reiterates that this consists of an attack on the physical integrity of a person, that is, injuries of varying severity inflicted on another person without taking his or her life.

101. The Court notes that in the present case, it appears from the documents in the file, in particular the medical certificate produced, that when the child AMEKEYA Mathias was evacuated to the Lomé hospital centre following the explosion of tear gas that caused him injuries, the doctor who received him made the following observations:

- Decaying haemorrhagic wound from the distal end of the left forearm to the dorsal side of the hand exposing all severed tendon and bone elements;
- Bleeding wound in the left shoulder and left arm;
- Haemorrhagic wound in the right shoulder and right arm;
- Shallow haemorrhagic wound on the anterosuperior side of the thorax;
- Presence of numerous bleeding wounds on the head with rhinorrhagia;
- Jugular wound.

102. The doctor concluded that the patient was the victim of trauma caused by tear gas explosion and presented a devastating wound covering the left forearm and hand with osteotendinous lesions and vascular nerve damage associated with multiple haemorrhagic wounds affecting the chest, face, shoulders, and arms, leading to amputation.

He estimated temporary incapacity for work (ITT) at ninety days unless further complication.

The Court therefore finds that the defendant clearly violated the child's right to physical integrity.

103. With regard to the right to enjoy the highest attainable standard of health, the Court reiterates that it has already found that the applicant's son was subjected to cruel and inhuman treatment by the respondent and that his right to physical integrity was violated by the latter. This injury has necessarily affected the quality of life of this child, whose photographs in the file show a stump in place of his amputated left hand. In addition, the psychological disorders suffered by the child are similar to post-traumatic stress disorder (PTSD), a definite consequence of the traumatic event he experienced at the age of 8.

The Court finds, in light of all these facts, that the defendant also violated the right of the child AMEKEYA Mathias to enjoy the highest attainable standard of physical and mental health.

D THE VIOLATION OF THE RIGHT TO A DECENT LIFE, FULL ENJOYMENT AND DEVELOPMENT OF THE CHILD

104. The applicant alleges a violation of Articles 24. 1 of the International Covenant on Civil and Political Rights, Articles 23(1)(2) and 39 of the Convention on the Rights of the Child, Article 13(1) (2) of the African Charter on the Rights and Welfare of the Child, and Article 3(h) of the Convention on the Rights of Persons with Disabilities, which provide, respectively, that:

Article 24.1 of the ICCPR:

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such

measures of protection as are required by his status as a minor, on the part of his family, society and the State"

Article 23 (1) (2) of the Convention on the Rights of the Child:

1 "*States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*

2 *"States Parties recognizing the right of children with disabilities to special care and encouraging and shall ensure, to the extent of available resources, the provision, upon request, of assistance to eligible children with disabilities and their caregivers appropriate to the condition of the child and the situation of the child's parents or caregivers."*

39. "*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. This rehabilitation and reintegration take place in conditions that promote the health, self-respect, and dignity of the child."*

Article 3 (h) of the Convention on the Rights of Persons with Disabilities:

"The principles of the Convention are (...) respect for the evolving capacities of the disabled child and respect for the right of children with disabilities to preserve their identity."

105. The respondent considers that the applicant is entirely wrong in claiming that he failed to take the necessary measures to ensure the well-being of the child who suffered the amputation. It asserts that the application submitted to the Court contains no reference to any assistance requested from it by the applicant for her child who had become disabled.

106. It also notes the applicant's failure to take into account the best interests of the child Mathias, insofar as it was incumbent upon her, if she was genuinely concerned about her child's well-being, to seek assistance for him, regardless of the causes of his disability, with a view to facilitating his physical and psychological rehabilitation and social reintegration. Having received no request for assistance from any disabled child on behalf of the applicant, the latter cannot be blamed for failing to take appropriate measures to facilitate the physical and psychological rehabilitation and social reintegration of her child.

107. The defendant claims that he was not informed of the facts or of the applicant's child's disability. It therefore considers that the applicant cannot accuse it of any negligence with regard to the protection of her disabled child. It requests that the claims made by the applicant be dismissed.

ANALYSIS OF THE COURT

108. The Court notes that it follows from the articles cited that the special care to which disabled children are entitled is provided on request and within the limits of available resources.

109. The Court notes that when the applicant describes the events relating to the period following the amputation, she simply states that her son is dependent on others for many of his needs, that he is suffering from psychological trauma, that he regularly wakes up screaming in the middle of the night and that he has to endure daily ridicule from his schoolmates and neighbours, consequences of the acts suffered by her child.

The Court notes that it focused on the consequences of the act on the quality of life of her child.

110. The Court notes that, while there is no doubt that the defendant has an obligation to take all necessary measures to ensure that persons with disabilities can effectively

enjoy the right to the highest attainable standard of health, the applicant does not prove specifically how the defendant failed to fulfil this obligation in relation to her son. She did not specify that she had requested assistance from the State to ensure that her son could live in dignity or receive psychological care or rehabilitation measures, or that the State, having been informed of the stigmatization to which he was subjected, did not take corrective measures, in the form of awareness-raising, to put an end to this stigmatization. The applicant also fails to prove that she requested the intervention of the defendant on behalf of her child and that she received no positive response.

111. The Court reiterates that the violation of Articles 10 and 25 of the Convention on the Rights of Persons with Disabilities, concerning respectively the obligation of the State to take all necessary measures to ensure that persons with disabilities enjoy the right to life and the right to enjoy the best possible state of health without discrimination, implies an obligation on the State to take appropriate measures to ensure access to health services, including rehabilitation services.

112. The Court emphasises that these obligations and rights owed to persons with disabilities consist of a recognition of rights of a general scope and require specific measures in favour of persons with disabilities.

113. The applicant did not provide evidence that the respondent failed to take the general measures required by Article 25 of the Convention on the Rights of Persons with Disabilities and that there are general practices of discrimination against persons with disabilities in the enjoyment of those rights, in violation of Article 10 of the aforementioned Convention.

114. The Court observes that, in these circumstances, even if the facts relating to the period following the amputation are accepted as related by the applicant, the allegations of violation of the articles cited are unfounded.

XI THE CLAIM FOR COMPENSATION FOR THE ALLEGED DAMAGES

115. The Court notes that the applicant seeks damages in the amount of one hundred million (100,000,000) CFA francs in compensation for the damage her son allegedly suffered;

116. The defendant, for its part, requests that the Court declare that it did not violate any of the rights invoked by the applicant and dismiss all of its claims, requests, and conclusions as unfounded.

ANALYSIS OF THE COURT

117. The Court recalls that its jurisdiction over human rights violations allows it not only to find such violations but also to order redress where appropriate.

118. Nevertheless, the Court specifies that damages are awarded to the victim of damage only to compensate for the damage that the latter has actually suffered through the fault of the perpetrator of the harmful act.

119. As a result, the victim must justify his or her status as a victim and prove the prejudice for which he or she seeks compensation.

120. In the present case, the Court concluded at the end of its analysis that the defendant did not fail to respect the best interests of the child or to protect the family. Nor did it violate the right of this child not to be subjected to torture or violate his right to life, to a decent life, to the full enjoyment and development of the child.

121. However, it found that the defendant violated his right not to be subjected to cruel, inhuman, or degrading treatment, his right to physical integrity, and his right to enjoy the highest attainable standard of health. Consequently, it declares partially justified the claim for payment of damages made by the applicant.

122. However, the Court finds that the sum of one hundred million CFA francs claimed by the applicant on behalf of her son as damages is excessive, particularly

since she did not produce any documents or evidence to justify the expenses she incurred since the victim was injured.

The Court considers, after an objective assessment taking into account the reality of the situation, that it should be reduced to a fair amount by setting the compensation at fifty million CFA francs.

XII. COSTS

123. Pursuant to Article 66, paragraph 2 of the Rules of the Court, the unsuccessful party is ordered to pay the costs, if the other party has applied for it. The Court notes that in the present case the applicant and the respondent have concluded to that effect. Consequently, the Court holds that the defendant who was unsuccessful should bear the entire costs.

XIII. OPERATIVE PART

For these reasons, the Court, sitting in open court and having heard both parties:

On the Jurisdiction of the Court:

Declares itself competent to hear the case;

On admissibility

Declares the application admissible;

On the merits of the case

Declares that the defendant did not fail to respect the best interests of the child or to protect the family.

Nor did it violate the right of this child not to be subjected to torture or violate his right to life, to a decent life, to the full enjoyment and development of the child.

Holds, on the other hand, that the defendant violated his right not to be subjected to cruel, inhuman or degrading treatment,

Declares that the defendant violated the right of the child AMEKEYA Mathias to physical integrity and his right to enjoy the highest attainable standard of health.

Declares the claim for damages brought by the applicant to be partially well founded.

Orders the defendant to pay her the sum of fifty million (50,000,000) CFA francs in damages for the harm suffered by her minor son.

COSTS:

Orders the Defendant to pay the costs.

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

And the following having appended their signatures:

Hon. Justice Ricardo Claúdio Monteiro **GONÇALVES** - President

Hon. Justice Sengu Mohamed **KOROMA** - Member

Hon. Justice Gberi-bè **OUATTARA** - Judge Rapporteur/Member

ASSISTED BY: Dr. Yaouza **OURO-SAMA** - Chief Registrar