AFRICAN UNION		UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

KOUADIO KOBENA FORY

V.

RÉPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 034 /2017

JUDGMENT

2 DECEMBER 2021

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The Court composed of: Imani D. ABOUD, President, Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafâa BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - Judges; and Robert ENO, Registrar

In the Matter of

KOUADIO Kobena Fory
Self-Represented

Versus

REPUBLIC OF COTE D'IVOIRE
Represented by:
Mrs. LY SANGARE, nee Kadiatou, Judicial Officer of the Treasury

After deliberation,

Renders this Judgment

I. THE PARTIES

1. Mr. Kouadio Kobena Fory, (hereinafter referred to as "the Applicant") is an Ivorian national. The Applicant alleges the violation of his rights following two imprisonments, the first between 1995 and 2005 and the second between 2005 and 2011.

2. The Application is filed against the Republic of Côte d'Ivoire (hereinafter referred to as the "Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as the "Charter") on 31 March 1992 and to the Protocol establishing an African Court on Human and Peoples' Rights on 25 January 2004. The Respondent State also deposited, on July 23, 2013, the Declaration provided for in Article 34(6) of the

Protocol (hereinafter referred to as "the Declaration") by which it accepted the Court's jurisdiction to receive applications from individuals and non-governmental organizations having observer status before the Commission. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of its Declaration. The Court ruled that this withdrawal has no bearing on pending cases or on new cases filed before the entry into force of the withdrawal one year after it was filed, that is on 30 April 2021.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant avers that on Friday, 21 July 1995, he took part in a meeting at the administrative centre of the Gagnoa region to approve the budget of the Commune of Guiberoua, of which he is the revenue officer. He further avers that during this meeting, a decision was taken to lift the debt ceiling and to pay off Government suppliers who had been awaiting their payments for over seven months. He submits that it was at that time that he withdrew the sum of Fifteen Million Seven Hundred and Forty-Two Thousand Five Hundred (15,742,500) CFA francs from the Gagnoa branch of *Société Générale de Banque en Côte d'Ivoire* (SGBCI). He also avers that he returned to post and proceeded on the same day to pay the suppliers. He states that at the end of the payment operation, at around 7 p.m., he deposited the vouchers for the said payments inside the counter of the clerk's office to be entered in the cash book the following working day, that is on Monday, 24 July 1995.

4. On Sunday, 23 July 1995, at about 6 p.m., while he was at home, a fire broke out in the premises of the Commune's revenue office, at the municipal revenue collection office. security officers who intervened to put out the fire reported

[1] *Suy Bi Gohore Émile and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No.044/2019, Judgment of 15 July 2020 (Merits and reparations), § 67; *Ingabire Victoire Umuhoza v. Republic of Rwanda*, (Jurisdiction) (3 July 2016) 1 AfCLR 562 § 69.

finding a plastic can with a strong smell of gasoline and bird feathers that had probably been used to spray the gasoline before setting the premises on fire.

5. On Monday, 24 July 1995, the regional treasurer of Gagnoa (hereinafter referred to as "the regional treasurer"), accompanied by several officials from his treasury and security officers, returned to the scene of the fire to continue their investigations. On the evening of the same day, 24 July 1995, the Applicant was arrested at his home by security officers following a complaint by the regional treasurer for misappropriation of public funds to the tune of Thirty-Three Million Eight Hundred Thousand Eight Hundred and Thirty-Seven (33,800,837) CFA francs.

6. On 5 June 1996, the Gagnoa Court of First Instance sentenced the Applicant to ten (10) years in prison, a fine of Five Hundred Thousand (500,000) CFA francs and damages of Twenty-Five Million Nine Hundred Sixty-One Thousand Eight Hundred Thirty-Seven (25,961,837) CFA francs to the Respondent State.

7. The Applicant states that on 31 July 2005, after having served the ten (10) year sentence, he was released and then re-arrested on 5 August 2005, and without any indictment or trial, was incarcerated at the Abidjan MACA, together with political prisoners from "*Rassemblement des Républicains"* (hereinafter referred to as "RDR") and "*Front Populaire Ivoirien"* (hereinafter referred to as "FPI") until 1 August 2011, the day they were freed.

8. Believing that his fundamental rights and those of his wife and children have been violated by the Respondent State, the Applicant, acting on his own behalf and on behalf of his wife and three children, filed this application with the Court on 8 November 2017.

B. Alleged violations

9. The Applicant alleges that the Ivorian judiciary and public administration premeditatedly violated his rights and those of his family members. He lists the alleged violations as follows:

i. the right to equal protection by the law as guaranteed in Article 3(2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as the “ICCPR”);
ii. the right to physical and moral integrity, dignity, respect for one's reputation and privacy guaranteed under Articles 4, 5 and 16 of the Charter; Articles 8 (3), 10 (1) and 17 of the ICCPR and Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “CAT”);
iii. the right to liberty and security of the person as guaranteed in Article 6 of the Charter;
iv. the right to a hearing and to a remedy under Article 7(1) (a) (b) (c) and (d) of the Charter and Article 14 (3) and (5) of the ICCPR;
v. the right to freedom of association as guaranteed under Article 10 of the Charter;
vi. the right to work and to adequate remuneration as guaranteed in Articles 13(2), 15 and 28 of the Charter and Articles 6(1) and 7(1) (C) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the “ICESCR”);
vii. the right to property as guaranteed in Article 14 of the Charter;
viii. the right to protection of the family guaranteed in Articles 18(1), (2) and (3) of the Charter and 10(1) of the ICESCR;
ix. the right not to be compelled to testify against oneself under Article 14 (3)(g) of the ICCPR;
x. the obligation of the State to guarantee the independence of the courts and to promote human rights and freedoms guaranteed under Articles 2 and 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was received at the Registry on 8 November 2017. On 8 May 2018, the Applicant, on his own initiative, filed additional submissions to his Application.

11. On 2 July 2018, the Application and the additional submissions were served on the Respondent State.

12. On 1 October 2018, the Registry notified the Chairperson of the African Union Commission and the Executive Council of the African Union as well as the other entities referred to in Rule 42(4)[2] of the Rules of Procedure of the Application

13. On 10 March 2020, the Applicant and the Respondent State were invited to submit to the Registry certain documents in support of the request for reparations made in the Application and reiterated in the Applicant's Reply, specifically the public administration workers classification document, the salary scale of the public servants as well as all other documents serving as proof of ownership of certain buildings mentioned in the Application.

14. The Parties filed their submissions within the stipulated timeline.

15. On 12 October 2021, the pleadings were closed, and the parties were duly informed.

16. By a Ruling of 25 November 2021, the Court amended the initial title of the Application “Kouadio Kobena Fory, spouse son and daughters v. Republic of Côte d’Ivoire” to read “Kouadio Kobena Fory v. Republic of Côte d’Ivoire”.

IV. PRAYERS OF THE PARTIES

17. The Applicant prays the Court to find that the Respondent State violated his fundamental rights and those of his family members, and to condemn it with pecuniary and property measures so as to cure and totally erase the said violations and the damages suffered as if they never occurred. In particular, he requests:

    i. That he be reinstated in his position as Paymaster or in a similar position in the grade corresponding to twenty-two (22) years of career and be paid the sum of Twenty Million United States dollars ($20,000,000) as back pay and related benefits since June 1996 until the day of his reinstatement;

[2] Rule 35(3) of the former Rules of 2 June 2010.

ii. That his wife, Mrs. Yavo Jeanne, be reinstated in her post as Secretary General of the Regional Directorate of National Education or in a similar position, taking due account of the changes that have occurred in her supervisory Ministry and the current structure thereof. He further requests that she be paid the sum of Two Million United States dollars ($2,000,000) to her as back pay and related benefits;

iii. That he be reimbursed the sum of Four Thousand United States dollars ($4,000) being the fees of two lawyers before the domestic courts;

iv. The reimbursement of the sum of Thirteen Thousand One Hundred and Twenty United States dollars ($13,120) being expenses incurred by his family to visit him in prison, as well as the sum of Twenty Thousand United States dollars ($20,000) being his travel expenses from Gagnoa to Abidjan for the referral of his case to the Disciplinary Board of the Civil Service and the National Human Rights Commission of Cote d'Ivoire (CNDHCI);

v. The immediate restitution of landed properties that were taken from him during his incarceration and subsequently sold or assigned to other persons or the payment in money equal to their respective values, the total of which amounts to one Billion One Hundred and Eighty-Eight Million United States dollars ($1,188,000,000), as well as damages;

vi. The payment as soon as possible of the sum of Eight Billion United States dollars ($8,000,000,000) as compensation for the extra-patrimonial damage suffered as a result of the infringement of his fundamental rights by the Respondent State;

vii. The pure and simple annulment, both from a criminal and civil point of view, of Judgment No. 218/1996 of 5 June 1996, sentencing him to ten (10) years in prison and the confirmatory Judgment No. 276 of 25 July 1997;

viii. That adequate measures be taken to establish responsibility for the failure to process cassation Appeal No. 13 of 29 July 1997, as well as for the disappearance of his case docket from the judicial circuits of the Respondent State, and to order the retrieval of the docket;

ix. That adequate measures be implemented to improve the reliability of investigation procedures and recording of testimony by the parties and witnesses.

x. Amendment of the General Statute of the Civil Service

xi. That an article be published in the "FRATERNITE MATIN" daily newspaper, exposing, on the one hand, the arbitrary nature of his arrest, detention and

conviction and, on the other hand, the irregular manner in which his career, his salary and related benefits were suspended;

xii. That such other steps as the Court may deem appropriate be taken to prevent the reoccurrence of the violations contemplated in the Application.

18. The Applicant prays the Court to order such security measures as it deems appropriate to protect him and his family members from retaliation, such as "seeking asylum in an embassy or other secure locations».

19. In his Reply, the Applicant prays the Court to:

i. declare the Application admissible in all its aspects;
ii. declare that the security measures requested in the application are necessary;
iii. find that the Respondent State has committed all the violations mentioned in the Application and in the Reply and to order the Respondent State to make full reparations;
iv. order the Respondent State to implement the corrective measures requested;
v. dismiss the arguments of the Respondent State and dismiss its claims and demands.

20. In its Response, the Respondent State prays the Court to

i. declare that it lacks *rationae personae* jurisdiction over Mrs Jeanne Kouadio, nee Yavo, Wilfried Fory, Akoua Yiouasson Merveille Laeticia Fory and Linda De-la-Sainte-Face Fory;
ii. declare the Application inadmissible for failure to exhaust local remedies and for having been filed outside the stipulated time limit;
iii. declare that the Respondent State has not violated the Applicant's human rights;
iv. dismiss the Applicant's request for remedial and pecuniary measures;
v. dismiss all of the Applicant's claims and order him to pay the costs.

V. JURISDICTION

21. The Court notes that Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

22. The Court further notes that under Rule 49(1)[3] of the Rules:

> The Court shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules.

23. Based on the above-mentioned provisions, the Court must, in each application, make a preliminary examination of its jurisdiction and rule on objections to its jurisdiction, if any.

24. In the instant case, the Respondent State requested the Court to find that the Applicant has no standing to act on behalf of his family, and not to consider the latter as Applicants. The Court has already examined the preliminary issue in the Ruling of 25 November 2021 and found it meritorious. Accordingly, the Court ordered the title of Application No. 034/2017 to be amended as it appears in the instant judgment.

25. The Court therefore notes that its material, personal, territorial and temporal jurisdiction are not in dispute between the parties. However, the Court must ensure that these four aspects of jurisdiction are met.

26. On material jurisdiction, the Court notes that it is established insofar as the Applicant alleges a violation of his rights under the Charter and other international human rights instruments to which the Respondent State is a party.[4]

[3] Rule 39(1) of the Rules of 2 June 2010.
[4] The Respondent State became a party to the International Covenant on Civil and Political Rights ("ICCPR") on 26 March 1992. It also became a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 5 March 1997.

27. With regard to personal jurisdiction, the Court recalls, as already indicated in paragraph 2 of this judgment, that on 29 April 2020, the Respondent State deposited the instrument of withdrawal of the Declaration provided for in Article 34(6) of the Protocol.

28. The Court reiterates its position that the withdrawal of the Declaration does not have retroactive effect and has no bearing on any cases pending at the time of depositing the instrument of withdrawal or any new cases filed before the withdrawal of the Declaration takes effect on 30 April 2021.[5] Since the filing of the instant Application on 8 November 2017, predates the Respondent State's withdrawal of its Declaration, the withdrawal has no effect on the Court's personal jurisdiction. Accordingly, the Court concludes that it has personal jurisdiction over this Application.

29. On territorial jurisdiction, the Court observes that it is established, insofar as the facts of the case took place in the territory of the Respondent State.

30. With regard to temporal jurisdiction, the Court notes that the Applicant alleges a series of violations, some of which are consequential to the proceedings leading to his trial, conviction and detention from July 1995 until his release from prison on 31 July 2005, and other violations consequential to his detention from 5 August 2005 to 1 August 2011, the date of his release.

31. In this regard, and with regard to the alleged violations of the right to equal protection before the law, the right not to be compelled to give incriminating evidence against one's self, the right to the protection of the family and the right to be tried in a timely manner, allegedly committed between 1995 and 25 January 2004, the Court observes that the facts giving rise to these alleged violations occurred before the entry into force of the Protocol for the Respondent State, that is on 24 January 2004.

[5] *Suy Bi Gohore Émile and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No.044/2019, Judgment of 15 July 2020 (Merits and reparations), § 67.

32. The Court recalls that in *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso*, with regard to the right to life of the four persons assassinated on 13 December 1998, it established that "... although Burkina Faso had already ratified the Charter at the time of the alleged crime, the Court lacks *ratione temporis* jurisdiction to consider the alleged violation of the right to life resulting from the murder of Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo, because, in the case of Burkina Faso, "this instantaneous and completed incident" occurred before the entry into force of the instrument, that is, the Protocol, which gives the Court jurisdiction to hear, inter alia, the alleged violations of the Charter"[6]. On this basis, the Court considers that in the instant case, as the Respondent State ratified the Protocol on 25 January 2004, its temporal jurisdiction is established only with respect to alleged violations committed after that date, except in the case of a continuing violation.[7]

33. In this case, the Court notes that it has temporal jurisdiction in relation to the alleged violation of the right to be tried in a timely manner, insofar as the alleged violation is of a continuing nature, since the Supreme Court, which heard the Applicant's cassation appeal on 29 July 1997, is yet to issue a decision on it. The Court therefore does not have temporal jurisdiction over the other alleged violations mentioned in paragraph 31 above, which arose out of the trial proceedings before the Gagnoa Court of First Instance in June 1996.

34. With regard to the alleged violations committed after the date of entry into force of the Protocol with respect to the Respondent State, namely, between 5 August 2005 and 1 August 2011, these are of a continuing nature, insofar as the Applicant still remains "suspended from office" and deprived of his property rights at the time of filing the Application with the Court in 2017. Thus, the Court's temporal jurisdiction is established with respect to these alleged

[6] *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (Merits), (28 March 2014) 1 AFCLR 219, § 67 and 68.
[7] On the issue of continuing violation see: *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (Merits), (28 March 2014) 1 AfCLR 219, § 73.

violations committed after the Respondent State became a Party to the Protocol.

35. In conclusion, the Court has jurisdiction to hear the following alleged violations: the right to be tried in a timely manner; the right to freedom of association and political opinion; the right to liberty, security of the person and prohibition of arbitrary arrest or detention; the right to work and to remuneration; the right to physical and moral integrity and to respect for the inherent dignity of the human person, the right to a better state of health and the right to property.

VI. ADMISSIBILITY

36. According to Article 6(2) of the Protocol, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

37. Rule 50(1) of the Rules[8] reads as follows: "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules".

38. Rule 50(2) of the Rules of Court[9], which restates in substance the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a) Indicate their authors even if the latter request anonymity;
> b) Are compatible with the Constitutive Act of the African Union and with the Charter;
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d) Are not based exclusively on news disseminated through the mass media;
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

[8] Rule 40 of the Rules of 2 June 2010.
[9] Rule 40 of the Rules of 2 June 2010.

f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter;

g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

A. Objections based on the inadmissibility of the Application

39. The Respondent State raised two objections to the admissibility of the Application, namely, objection based on non-exhaustion of local remedies and objection based on failure to file the application within reasonable time.

i. Objection based on non-exhaustion of local remedies

40. The Respondent State submits that after the Applicant was convicted by the Gagnoa Court of First Instance, he first appealed to the Appeal Court of Daloa, which upheld the first instance judgment in all its aspects. He then appealed to the Supreme Court on 29 July 1997.

41. It asserts that the Applicant, who subsequently appealed the Appeal Court judgment of 19 July 1997 before the Supreme Court, cannot invoke the exhaustion of local remedies since he did not produce proof that the Supreme Court to which he appealed had already issued a decision. It submits therefore that since the case was still pending before the Supreme Court, the Court should declare the Applicant's Application inadmissible for non-exhaustion of local remedies.

42. The Respondent State, therefore, submits that the Court should declare the Application inadmissible on the ground that the Applicant has not exercised any remedy for damages resulting from the alleged malfunctioning of the judiciary.

*

43. The Applicant rebuts the arguments of the Respondent State and states that he has exhausted all local remedies available to him, since he filed his appeal before the Supreme Court, the highest court of the Respondent State, four days after the judgment of the Appeal Court, on 29 July 1997.

44. The Applicant alleges that the cassation appeal he filed with the Supreme Court, more than 21 years ago, has not been heard**,** despite all the steps he has taken for the Supreme Court to rule on this appeal since his release from prison, 10 years ago.

45. He further contends that the fact that his cassation appeal before the Supreme Court is still pending after more than twenty-one (21) years is manifestly unusual and constitutes undue delay. He considers that this state of affairs clearly manifests an abnormally long delay in the processing of his appeal, as is evident from the Rules of Procedure of the Court, and which justifies both his appeal to the Court and the admissibility of his application.

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46. The Court notes that the Respondent State maintains, on the one hand, that the local remedy exercised by the Applicant is still pending before the Supreme Court and, on the other hand, that he has not exercised any remedy before the domestic courts for compensation for alleged harm.

1. Applicant's cassation appeal to the Supreme Court

47. The Court recalls that it has already established that the local remedies to be exhausted in accordance with the requirements of Article 56(5) of the Charter, are judicial remedies.[10] These must, moreover, be available and exercisable by the Applicant without let or hindrance.[11] In the instant case, the Court notes that after the judgment of the Appeal Court, the Applicant appealed to the Supreme

[10] *Alex Thomas v. United Republic of Tanzania* (Merits), (20 November 2015) 1 AfCLR 465, § 64.
[11] *Lohé Issa Konaté v. Burkina Faso* (Merits), (5 December) 1 AfCLR 314 § 96.

Court, which is the highest court in the country, on 29 July 1997. It also notes that both parties have acknowledged that as at the date of filing the instant application before this Court on 8 November 2017, that is twenty (20) years, three (3) months and ten (10) days after the Applicant filed his appeal, the proceedings before the Supreme Court are still pending.

48. It is clear from the provisions of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules that there is an exception to the requirement of prior exhaustion of local remedies if it is clear that the proceedings in these remedies are being unduly prolonged. In so doing, the question is whether the Applicant's appeal to the Supreme Court, which has been pending for twenty (20) years, three (3) months and ten (10) days, has been unduly prolonged within the meaning of Article 56(5)[12] of the Charter and Rule 50(2)(e) of the Rules.[13]

49. In assessing whether a proceeding is unduly long, the Court shall take into account the circumstances of each case and in particular whether the case is complex, whether the parties and the domestic judicial authorities, in this case the Supreme Court, have acted with the required speed and diligence.[14]

50. The Court notes that in the instant case, the Applicant, assisted by his counsel, filed an appeal in cassation in the form and within the time limits prescribed by Article 578 of the Criminal Procedure Code of 14 November 1966. It appears from the record that during the Applicant's detention, his counsel followed up on the proceedings in order to have the Supreme Court rule on the Applicant's appeal, without ever succeeding. It also appears from the record that the Applicant, upon his release from prison, undertook numerous negotiations to have the Supreme Court issue its decision, but that all of them proved unsuccessful.

[12] Rule 40(2)(e) of the Rules of 2 June 2010.
[13] *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (Merits), (28 March 2014) 1 AfCLR 219, § 88.
[14] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (Admissibility), (21 March 2019) 2 AFCLR, 237, §§ 37 and 38; *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso*, Judgment (Merits) Ibidem. § 92.

51. With regard to the Respondent State, the Court recalls that it has already established that "Due diligence obliges the State to act and react with the dispatch required to ensure the effectiveness of available remedies".[15] In the instant case, the Court notes that the Respondent State does not provide the reasons that could have accounted for such a long delay of twenty (20) years, three (3) months and ten (10) days in processing the cassation appeal lodged by the Applicant before the Supreme Court, but that it simply relies on the failure to await the final decision of the Supreme Court as evidence that local remedies were not exhausted.

52. In these circumstances, the Court considers that the Applicant was not obliged to wait for the hearing of his cassation appeal before the Supreme Court prior to bringing the case before it, and that there is in this case an exception to the requirement to exhaust local remedies. Accordingly, the Court dismisses the objection raised by the Respondent State.

2. Local remedies exercised by the Applicant did not address the reparation measures requested

53. The Court recalls that the requirement to exhaust local remedies stipulates that the issues submitted to it, be raised, at least in substance, before the domestic courts having jurisdiction in the matter,[16] and that it is not sufficient for the Applicant merely to have brought proceedings concerning him before those courts.

54. In the instant case, the Court notes that the violations alleged before it by the Applicant relate to the criminal proceedings instituted against him since the fire outbreak at the Guiberoua revenue offices on 23 July 1995 and which essentially raise the question of the merits of the charges brought against him and his double detention from 1995 to 2005 and from 2005 to 2011.

[15] Ibidem § 152 and following.
[16] *Sébastien Germain Ajavon v. Benin* (Merits), op. cit. § 98.

55. In the instant case, the Court having concluded that it only has jurisdiction in respect of events occurring after the entry into force of the Protocol for the Respondent State on 25 January 2004, it was necessary to examine whether the Applicant exhausted local remedies in respect of each of the alleged violations referred to in paragraph 35 of this judgment.

56. With regard to the alleged violation of the right to work and remuneration, it appears from the documents in the case docket that on 4 October 2011, the Applicant petitioned the Civil Service Disciplinary Board, a body empowered by the Civil Service Statute of the Respondent State, to request his reinstatement in his position as Paymaster. After hearing the Applicant, the Judicial Officer of the Treasury and the Inspector General of the Treasury at its 30 March 2012 meeting, the Civil Service Disciplinary Board deliberated on 6 June 2012 and concluded that although the Applicant was not removed from the Civil Service, he would have to produce the ruling of the Supreme Court on his appeal before any final decision by the Board. The Court also noted that the Applicant had the possibility of appealing the decision of the Disciplinary Board to the administrative courts to exhaust domestic remedies.

57. Regarding the alleged infringement of the Applicant's right to landed properties, it is clear from the documents in the docket that the Applicant brought an action before the Gagnoa Court of First Instance, respectively in 2012, on 26 May 2015, on 26 November 2015 and on 15 January 2016, to assert his property rights over his landed property and to claim, on the one hand, the restitution of some of his landed property and, on the other hand, the eviction of encroachers on his rural lands measuring 250 and 125 hectares located, respectively in, Kabehoa and Zabéza.

58. The Applicant also asserts that at the time of filing the Application with the Court on 7 November 2017, the said appeals were still pending before the domestic courts. The Court recalls that the exception to the rule of exhaustion of local remedies is allowed only if they are unduly prolonged. In the instant case, the Court does not consider that the periods of two (2) years five (5) months and twelve (12) days and one (1) year nine (9) months and twenty-four (24) days

respectively, unduly long such that they can exempt the Applicant from the requirement to exhaust local remedies prior to bringing the case to the Court.

59. From the foregoing, the Court finds that the Applicant has not exhausted local remedies with respect to the alleged violations of his property rights over his real estate and with respect to his right to work and to renumeration.

60. Regarding the alleged violations of the right to freedom of association and political opinion; the right to liberty, security of the person and the prohibition of arbitrary arrest or detention, as well as the right to physical and moral integrity and the right to respect for dignity, the Court notes that these violations relate to the arrest and detention of the Applicant, without indictment and without trial, from 5 August 2005 to 1 August 2011 at the Abidjan MACA prison, together with other political prisoners from the RDR and FPI, until his release.

61. The Court notes that during his detention and even after his release, the Applicant did not take any action against what he describes as an attack on his opinion, his freedom, the security of his person and his dignity, to denounce the arbitrary nature of his detention.

62. The Court notes however that Article 373 of the Penal Code provides that "*whoever, arrests, detains or sequesters one or several persons without an order from the constituted authorities, and except in cases where the law orders the seizure of the perpetrators of offences, shall be liable to five to ten years' imprisonment and a fine of 500,000 to 5,000,000 francs*". It emerges from this provision that arbitrary arrest or detention is punishable, and the Applicant had a remedy to exercise and exhaust against his arrest on 5 August 2005 and his detention until 1 August 2011.

63. Consequently, the Court considers that the Applicant did not exhaust local remedies in relation to the alleged violations of his right to freedom, to safety and the prohibition of arbitrary arrest or detention, as well as the right to physical and moral integrity and the right to the respect of dignity.

64. With regard to the right to be tried in a timely manner, the Court notes that the Applicant intended to assert his alleged rights during the cassation appeal since, upon his release from prison in August 2011, he undertook several steps, in particular by submitting correspondence, all dated 7 March 2017, to the Inspector General of Judicial Services, the President of the Supreme Court and the Minister of Justice, Human Rights and Public Freedoms, respectively, on the issue of his cassation appeal in order to have it heard.

65. The Court concludes that with regard to the alleged violation of the right to be tried in a timely manner, the Applicant had no remedy to exhaust.

ii. Objection based on the failure to file the Application within a reasonable time

66. The Respondent State cites Article 56(6) of the Charter and Rule 50(f)[17] of the Rules and argues that this Application was filed “beyond reasonable time”.

67. It alleges that while it is true that neither “timely manner” nor “unduly long time limits” have been defined, the fact remains that the Court considered three (3) years and eighteen (18) months [Sic][18] as unduly long time limits, and that therefore the Applicant, by bringing the case before the Court more than twenty (20) years after his appeal in cassation, did not submit his Application within a reasonable time.

68. The Respondent State maintains that, in any event, the Applicant cannot rely on the inertia of the Supreme Court to justify the late filing of his Application. It therefore asks the Court to declare the Application inadmissible.

[17] Rule 40(6) of the Rules of 2 June 2010.
[18] The Respondent State refers here to two decisions of the African Commission on Human and Peoples' Rights, namely Communications No. 199/97: *Odjouriby Cossi Paul v. Benin* and *250/02 Liesbeth Zegaveld* and *Mussie Ephrem v. Eritrea*.

69. The Applicant refutes the arguments of the Respondent State and argues that the delay in filing the Application, which is considered to be too long, is due to the Respondent State itself, acting through its departments and employees.

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70. The Court observes that neither the Charter nor the Rules set a specific time limit within which applications must be filed after the exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules simply provide that Applications must be “submitted within a reasonable period from the time local remedies are exhausted or from the date the Court is seized of the matter".

71. The Court recalls its previous jurisprudence that, in the absence of an indication of a specific time limit within which an application must be submitted after the exhaustion of local remedies, the reasonableness of any time limit and how to calculate reasonable time are to be assessed on a case-by-case basis, taking into account the circumstances of each case.[19] The Court recalls that the reasonable time within which an application may be submitted to it begins to run from the date of the last local remedy pursued and exhausted by the Applicant, which means that the proceedings to which the Applicant was a party will have come to an end at the time the Application is filed with the Court.[20]

72. In the instant case, the Court notes that, with regard to the alleged violation of the right to be heard within a reasonable time, it cannot be said that the Application was filed within an unreasonable time, given that the Applicant's appeal to the Supreme Court is still pending.

73. Based on these two findings, the Court dismisses the Respondent State's objection in relation to the alleged violation of the right to be tried in a reasonable time.

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[19] *Norbert Zongo and Others v. Burkina Faso (Preliminary objections) (25 June 2013*) 1 AfCLR 219*,* § 121.
[20] *Komi Koutché v. Republic of Benin*, ACtHPR, Application No.020/2019, Judgment of 25 June 2021, §61.

B. Other admissibility requirements

74. The Court notes that in this case, the parties do not dispute that the Application complies with Rule 50(2)(a)(b)(c)(d)(g) of the Rules. Nevertheless, the Court must be satisfied that the requirements of these rules are met.

75. The Court notes that in accordance with Rule 50(2)(a) the Applicant has clearly stated his identity.

76. The Court notes that the requests made by the Applicant are intended to protect his Charter rights. It also notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h), is the promotion and protection of human and peoples' rights. Accordingly, the Court considers that the Application is consistent with the Constitutive Act of the African Union and the Charter and therefore finds that it satisfies the requirement of Rule 50(2)(b) of the Rules.

77. The Court further notes that the Application does not contain any offensive or insulting language and therefore satisfies the requirement of Rule 50(2)(c) of the Rules.

78. The Court further notes that the facts and pleas in the present Application are not based exclusively on information disseminated through the mass media but rather on challenges brought before the courts of the Respondent State. The Application therefore meets the requirement of Rule 50(2)(d).

79. Finally, the Court finds that the requirement of Rule 50(2)(g) is satisfied insofar as there is no indication that the instant Application concerns a matter that has already been resolved by the parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

80. From the foregoing, the Court finds that all the admissibility requirements set out in Article 56 of the Charter and Rule 50[21] have been met in relation to the alleged violations of the right to be heard in a timely manner.

VII. MERITS

81. In the instant case, the Court, taking into account its findings on its jurisdiction (paragraph 35) and admissibility (paragraph 80), will examine only the alleged violation of the right to be tried in a timely manner.

82. Regarding this alleged violation, the Applicant relies on Article 7 of the Charter and Article 14 of the ICCPR,[22] and contends that his cassation appeal, which he filed in the legal form and within the legal time limit before the Supreme Court, more than twenty (20) years ago, and which has still not been dealt with by the said Court, constitutes a violation of his right to be judged within a reasonable time.

83. The Respondent State did not submit any observations on this point.

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84. Article 7(1)(d) of the Charter provides that "Every individual shall have the right to have his cause heard. This right comprises: (a) [...]; (d) the right to be tried within a reasonable time by an impartial tribunal."

85. The Court recalls that it has already stated that in analysing the reasonableness of the length of proceedings, it takes into account the circumstances of the case and that “determination as to whether the duration of the procedure in respect of local remedies has been normal or abnormal should be carried out on a case-

[21] Rules 40 of the Rules of 2 June 2010.
[22] The Respondent State is a party to the International Covenant on Civil and Political Rights ("ICCPR") on 26 March 1992. It is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 5 March 1997.

by-case basis depending on the circumstances of each case".[23] On this point, the Court's analysis takes into account, in particular, the complexity of the case or of the proceedings relating to it, the conduct of the parties themselves and that of the judicial authorities in order to determine whether the latter "has been passive or clearly negligent."[24]

86. In the instant case, the Court notes that the Applicant filed an appeal in cassation on 29 July 1997[25] while he was already in custody. It is also clear from the case docket that the Applicant, with the assistance of his counsel, attempted on numerous occasions to follow up on the progress of the cassation appeal during his detention and after his release from prison in 2011.[26] The Court further notes that until the date the Application was filed with it in November 2017, that is twenty (20) years, three (3) months and ten (10) days later, the Applicant has never been heard despite all the steps he took to see the domestic courts rule on his appeal.

87. In this regard, the Court considers that the domestic courts have been negligent and the failure of the Supreme Court to rule on the Applicant's appeal for twenty (20) years, three (3) months and ten (10) days violates the latter's right to be tried within a reasonable time**.**

88. Accordingly, the Court finds that the Respondent State has violated the Applicant's right to be tried within a reasonable time as guaranteed by Article 7(1)(d) of the Charter.

VIII. REPARATIONS

89. Article 27(1) of the Protocol provides:

[23] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (Admissibility), (21 March 2018), 2 AfCLR 237, § 37; *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (Merits) (28 March 2014), 1 AfCLR 219*, op. cit, §* 92**.**
[24] *Mariam Kouma and Ousmane Diabaté v. Mali* (Merits), ibidem § 38.
[25] Appeal N°13; Attachment No. 4 and annex No. 36.
[26] See the following exhibits attached to the Application: Exhibit No. 63_1 to 3; Exhibit No.63_1 to 3; Exhibit No. 64_1 to 64_3; Exhibit No. 67.

> If the Court finds that there has been violation of a human of peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

90. The Court recalls its jurisprudence[27] and reaffirms that, in considering claims for damages resulting from human rights violations, it takes into account the principle that the State found to have perpetrated an internationally wrongful act is under an obligation to make full reparation for the consequences of that act, so as to remedy all the harm suffered by the victim.

91. The Court also recalls that it has established that compensation for harm resulting from a violation of a human right must, as far as possible, erase all the consequences of the wrongful act and restore the state that would probably have existed if the violation had not been committed.[28]

A. Pecuniary reparations

i. Material prejudice

a. Prejudice related to the right to work, to remuneration and to landed property

92. The Applicant prays the Court to order the Respondent State, pecuniary and property measures, in order to make full reparation for the harm that he suffered as a result of the violations of his rights. He prays the Court to order the Respondent State to pay him the sum of One Billion One Hundred and Eighty-Eight Million (1,188,000,000) United States dollars as the damages.

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[27] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema a.k.a. Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso* (Reparations) (5 June 2015) 1 AfCLR 258, § 20; *Lohé Issa Konaté v. Burkina Faso (*Reparations) (3 June 2016) 1 AfCLR 346, § 15; *Ingabire Victoire Umuhoza v. Republic of Rwanda,* (Reparations) (7 December 2018) 2 AfCLR 202 § 19.

[28] Mohamed Abubakari v. United Republic of Tanzania, Application No. 007/2013. Judgment of 4 July 2019 (Reparations), § 21; *Alex Thomas v. United Republic of Tanzania* Application No. 005/2013. Judgment of 4 July 2019 (Reparations), § 12. Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, Application No. 006/2013. Judgment of 4 July 2019 (Reparations), § 16.

93. The Court notes that it has declared inadmissible the alleged violations of the Applicant's right to work, to remuneration and to landed property, for failure to exhaust local remedies and will therefore not examine these allegations.

b. Prejudice related to expenses incurred by the Applicant's family during his detention

94. Applicant contends that during his detention at the Abidjan MACA between 2005 and 2011, his family members made 82 trips to visit him. He estimates the cost of these trips at Thirteen Thousand One Hundred and Twenty (13,120) United States dollars.

95. The Respondent State disputes the measure sought by the Applicant and argues that the travel expenses referred to were incurred by the members of the Applicant's family and that it is up to them to claim payment personally if the claims are justified.

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96. To prove the visits of his family members, the Applicant attached to the docket two communication permits issued by the Minister of Justice to his wife, Mrs. Yavo Jeanne Kouadio, in August 1997.

97. The Court recalls that it has established that the burden of proof for a claim for damages resulting from a violation of a human right rests with the Applicant, who must provide supporting evidence.[29] In the instant case, the Applicant does not support his claim with documents covering the travel expenses.

98. Accordingly, the Court dismisses the Applicant's request.

[29] *Reverend Christopher R. Mtikila v. Tanzania* (Reparations) (13 June 2014) 1 AfCLR 72 § 40.

ii. Moral prejudice

99. The Applicant states that he filed the present Application in order for the Court to note the numerous violations of his rights and the distress that his wife, children and relatives suffered for more than twenty years as well as to order the Respondent State to pay damages for the harm suffered both directly and indirectly. For these extra-patrimonial damages, the Applicant estimates the amount of compensation to be Eight Billion (8,000,000,000) United States dollars.

a. Moral prejudice suffered by the Applicant

100. The Applicant submits that the false charges brought against him and the entire judicial process that led to his **"**wrongful and legally flawed conviction", while he was in the prime of his life at the age of 36, totally shattered his promising professional and political life. He contends that the degrading and inhumane treatment he suffered in Abidjan prison caused serious damage to his health, honour, reputation and psychological trauma that continues even after his release. The Applicant further submits that because of his illegal detention he was torn away from the affection of his close relatives and family members, including his wife and children who were still minors.

101. The Respondent State opposes any idea of compensation for moral prejudice suffered by the Applicant and argues that the Applicant was subjected to due process of law without any intention to harm his dignity.

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102. The Court recalls its previous jurisprudence that moral prejudice suffered by victims of human rights violations is presumed[30] and in the instant case, it has found that the Respondent State violated the right of the Applicant to be tried within a reasonable time guaranteed under Article 7(1)(d) of the Charter.

[30] *Lohé Issa Konaté v. Burkina Faso*, (Reparations), § 58.

103. The Court notes in the instant case that until his retirement in 2019, the Applicant was never reinstated to his position following this violation, since the Public Service Disciplinary Council demanded to see the Supreme Court's judgment on appeal before authorising the Applicant to resume work.

104. The Court further notes that this series of events necessarily affected the Applicant's retirement benefits and the calculation of its amount, given that since the amendment of the law of 4 April 2012[31], the calculation of public servants' retirement benefits takes into account the years of highest salary of beneficiaries. It follows that the Applicant, whose career was interrupted for twenty-four (24) years (he was thirty-six (36) years old at the time), will only be paid benefits that border on the minimum.

105. Based on these considerations, the Court holds that the Applicant certainly suffered moral prejudice and awards him in fairness a lump sum of Forty Million (40,000,000) francs CFA.

b. Moral prejudice suffered by the Applicant's family

106. The Applicant asserts that his wife Jeanne Yavo Kouadio, his son Jean-Eudes Wilfried Fory, his daughters Akoua Yiouasson Merveille Laetitia Fory and Linda De-la-Sainte-Face Fory suffered from his arrest and detention, particularly his transfer from Gagnoa Prison to the Abidjan MACA prison, where they were further distanced from him and forced to travel more than 300 km each time they wished to visit him. He maintains that the numerous violations of his rights have undermined the harmonious development, respectability and moral integrity of his family, which has sunk into sudden poverty and some of whose members have died of grief and moral torture.

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[31] See Ordinance No. 2012-303 of 4 April 2012 on the organization of pension plans managed by the general fund for the retirement of state employees, abbreviated to CGRAE.

107. The Court notes that in the instant case, it has found that the Applicant suffered morally from the long delay in his appeal to the Supreme Court and considers that his family members also suffered from this, particularly from the fact that the numerous negotiations undertaken by the Applicant did not lead to any satisfactory result. The Court also considers that in addition, the Applicant's family members suffered by seeing that the Applicant was never able to resume work until he went on retirement in 2019.

108. However, compensation is granted only when there is proof of marital status for the spouses or, for the children, documents showing their filiation with the Applicant, including their birth certificates.[32]

109. It emerges from the birth certificates submitted by the Applicant and confirmed by the Respondent State that Jean-Eudes Wilfried Fory, Akoua Yiouasson Merveille Laetitia Fory and Linda De-la-Sainte-Face Fory are the children of the Applicant and bear the surname Fory. It is also clear from the same documents in the docket, in this case the marriage certificate, that Jeanne Yavo Kouadio is married to Kouadio Kobéna Fory.

110. Consequently, the Court considers Jeanne Yavo Kouadio, Jean-Eudes Wilfried Fory, Akoua Yiouasson Merveille Laetitia Fory and Linda De-la-Sainte-Face Fory to be indirect victims and awards to the Applicant's wife, Jeanne Yavo Kouadio, the sum of Two Million (2,000,000) CFA francs and to each of the three children the sum of One Million (1,000,000) CFA francs as reparation for the moral prejudice they suffered.

[32] *Zongo and Others v. Burkina Faso* (Reparations), § 54*; and Lucien Ikili Rashidi v. Tanzania* (Merits and Reparations), § 135*; Ingabire Victoire Umuhoza v. Republic of Rwanda* (Reparations) § 68.

B. Non-pecuniary reparations

i. Guarantees of non-repetition

111. The Applicant prays the Court to order the Respondent State to remove from the Ivorian Code of Criminal Procedure paragraph 4 of Article 115, in order to improve the reliability of the investigation procedures and to bring the Code of Criminal Procedure more in line with international standards, and for the safety of citizens.

112. The Respondent State submits that the Applicant's request proves the Applicant’s disregard for the laws and the functioning of the country's justice system. It adds that the justice sector is undergoing reform, so that the measures requested by the Applicant are moot.

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113. The Court notes that as of the date of this judgment, the said provision had been repealed by Law No. 2018-975 of 27 December 2018 on the Criminal Procedure Code, and the requirement that the lawyer reside at the place of the investigation no longer features in the provisions of the said new Code.

114. The Court concludes that since the new Ivorian Criminal Procedure Code of 2018 has already remedied the inadequacy of the procedural law, the Applicant's request has become moot.

ii. Request to publish an article in the government daily newspaper

115. The Applicant prays the Court to order the Respondent State to publish an article in the daily newspaper "FRATERNITE MATIN", detailing the arbitrary character of his arrest, detention and conviction. The same article should also mention the irregular manner in which his career and his salary as well as the related benefits were suspended.

116. The Respondent State submits that the Court publishes its decisions through its means of publication, and the Applicant who wishes to publish a judicial decision favourable to him, is free to choose his means of publication.

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117. The Court recalls that the publication of its decisions at the expense of the Respondent States is also a form of non-pecuniary reparation that it may order when the said publication is deemed to be a moral and psychological satisfaction of the victim(s) or when the publication is intended to produce informational effects to third parties.

118. In the instant case, the Court considers that the publication of the instant judgment by the Respondent State contributes to the information of third parties, in particular the Ministry of Justice and the Supreme Court.

119. In this regard, the Court orders the Respondent State to take steps to publish this judgment on the websites of the Government, the Ministry of Justice and the Supreme Court for a period of at least for one (1) year.

iii. Request to grant the Applicant asylum in an Embassy or at any other secure location.

120. In his Application, the Applicant prayed the Court to order security measures of a nature to protect him and his family members from reprisals, such as "providing asylum in an embassy or other secure location".

121. Regarding the Applicant's request to be provided asylum in an Embassy, the Court considers this request falls outside its purview.

122. As to the request to find a secure location for him and his family, the Court notes that the Applicant does not specify the nature or imminence of reprisals that he mentions, on account of which he requests to be placed in a secure location. Consequently, the request is dismissed.

IX. COSTS

123. The Court notes that the Respondent State requests the Court to order the Applicant to pay the costs. The Applicant has not submitted any observations on the costs.

124. Under Rule 32(2) “Unless otherwise decided by the Court, each party shall bear its own costs, if any”.

125. In the instant case, the Court considers that there is no reason to depart from the principle set out in Rule 32(2).

126. The Court therefore decides that each party shall bear its own costs.

X. OPERATIVE PART

127. For these reasons:

THE COURT:

Unanimously,

On jurisdiction

i. *Finds* that it has jurisdiction to hear the alleged violations committed after the date of entry into force of the Protocol in regard to the Respondent State;

On admissibility

ii. *Finds* that the objection based on inadmissibility is founded in relation to the prohibition of arbitrary arrest and detention and the alleged violation of the right to the respect of his political opinion;

iii. *Declares* inadmissible the alleged violation of the right to work, to remuneration and to property;

iv. Dismisses the objection based on the alleged violations of the right to be tried within a reasonable time;

v. *Declares* the Application admissible*;*

On merits

vi. *Finds* that the Respondent State has violated the Applicant's right to a hearing within a reasonable time as guaranteed in Article 7(1)(d) of the Charter;

On reparations

On pecuniary reparations

vii. *Finds* that the request for reparation for prejudice related to the right to work, to remuneration, and to property is moot;

viii. *Dismisses* the request for the reimbursement of travel expenses purportedly incurred by the Applicant's family members to visit him during his detention;

ix. *Orders* the Respondent State to pay the Applicant the sum of Forty-five million (45,000,000) CFA francs, broken down as follows:

a) Forty million (40,000,000) CFA francs for the moral prejudice he suffered;

b) Two million (2,000,000) CFA francs as compensation for the moral prejudice suffered by the Applicant's wife;

c) One million (1,000,000) CFA francs to each of the Applicant's three (3) children for the moral prejudice they suffered;

On non-pecuniary reparations

x. *Dismisses* the Applicant’s request to be provided a secure location;

xi. *Orders* the Respondent State to publish this judgment on the website of the Government, the Ministry of Justice, and the Supreme Court for at least one (1) year*;*

On implementation of the judgment and reporting

xii. *Orders* the Respondent State to report within six (6) months from the date of notification of this Judgment on the measures taken to implement paragraph (ix) and within one (1) year, paragraph (xi) above and thereafter every six (6) months until the Court considers that the judgment has been fully implemented;

On costs

xiii. Orders that each Party shall bear its own costs.

Signed by:

Imani D. ABOUD, President;

Blaise TCHIKAYA, Vice-President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

M-Thérèse MUKAMULISA, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

and Robert ENO, Registrar;

Done at Dar es Salaam, this Second Day of December in the year Two Thousand and Twenty-One in English and French, the French text being authoritative.