AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA

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

THE MATTER OF

BAEDAN DOGBO PAUL AND BAEDAN M'BOUKE FAUSTIN

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 019/2020

JUDGMENT

5 SEPTEMBER 2023

TABLE OF CONTENTS

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

The matter of:

BAEDAN DOGBO PAUL AND BAEDAN M'BOUKE FAUSTIN

Represented by:
Mr Alphonse VAN, Advocate at the Bar of Côte d'Ivoire

Versus

REPUBLIC OF CÔTE D'IVOIRE

Represented by:
Mrs SANGARE, LY Kadiatou, Judicial Officer of the Treasury

After deliberation,

renders this Judgment:

I. THE PARTIES

1. Mr Baedan Dogbo Paul and Mr Baedan M'Bouke Faustin (hereinafter referred to as "the Applicants") are Ivorian nationals. They allege the violation of their rights as a result of the expropriation of their plot of land located in Abidjan.

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 on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 25 January 2004. On 23 July 2013, the Respondent State also deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations having observer status with 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 held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect, that is, one (1) year after its deposit, which is on 30 April 2021. .[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that in 1980, the Respondent State acting through the Real Estate Sales Service (SVI), expropriated a parcel of land of forty (40) hectares, forty-four (44) ares and sixty-two (62) centiares located in Abidjan-Yopougon Kouté, belonging to the Baedan family. On the parcel of land thus expropriated, the Respondent State proceeded, first, to construct the Centre Hospitalier Universitaire (CHU) in 1980 and, subsequently, the Cité Policière de la Brigade Anti-Émeutes (Cité Policière BAE) in 1998.

4. On 13 January 2007, following a compensation procedure initiated by the Applicants, the Tribunal of First Instance of Yopougon granted their claim and awarded them the amount of Eight Hundred and Thirty-nine Million, Four Hundred and Eighty-eight Thousand (839,488,000) CFA Francs as

[1] *Suy Bi Gohore Émile and Others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 406, § 67; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 69.

compensation for the loss of their customary rights over the expropriated parcel of land.

5. Following an appeal filed by *Agence de gestion foncière* (hereinafter 'AGEF'),[2] the Abidjan Court of Appeal, by Judgment of 13 July 2007, partly reviewed the Judgment of the Tribunal of First Instance of Yopougon by recalculating the amount of compensation for the Applicants' loss of customary rights in respect of the expropriated parcel of land. The Court of Appeal then reduced the compensation amount previously set at Eight Hundred and Thirty-nine Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA francs to Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA Francs and ordered AGEF to pay the said amount to the Applicants.

6. On 9 April 2009, the Supreme Court dismissed AGEF's appeal against the Appeal Court judgment of 13 July 2007 which, therefore, became final and binding.

7. The Applicants submit that, as at the date of filing the present Application, the Respondent State had not executed the judgment of the Court of Appeal. They further submit that from 2002, the Respondent State began to sell to third parties other parcels of their land, which were not part of the expropriated area.

B. Alleged violations

8. The Applicants allege the violation of the following rights:

   i. The right to property guaranteed in Article 14 of the Charter;
   ii. The right to be informed of their right to compensation after expropriation, guaranteed in Article 9 of the Charter;

[2] *Agence de Gestion Foncière* (AGEF), Established as a public limited company with majority public shares and a board of directors, has been managing urban land in the name and on behalf of the State and Regional Authorities since 6 May 1999.

iii. The right to have their cause heard guaranteed in Article 7 of the Charter;
iv. The right to respect for their dignity and the prohibition of all forms of degrading treatment guaranteed in Article 5 of the Charter;
v. The right of all citizens to equality before the law as guaranteed in Article 3 of the Charter; and
vi. The right to enjoy the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind, which is protected under Article 2 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. The Application was received at the Registry on 15 May 2020 and served on the Respondent State on 30 June 2020.

10. On 29 September 2021, the Court informed the Respondent State that the Court would render a judgment in default if it failed to file its response to the Application within forty-five (45) days.

11. By correspondence dated 26 October 2021, the Respondent State informed the Registry that it never received the Application and requested that the same be served on it.

12. On 1 April 2022, the Court issued an order for the Application to be served on the Respondent State afresh, which was done on 8 April 2022.

13. On 22 July 2022, the Respondent State filed its Response, which was notified to the Applicants on 27 July 2022 for their reply.

14. Pleadings were closed on 4 May 2023 and the Parties were duly informed.

IV. PRAYERS OF THE PARTIES

15. The Applicants pray the Court to find that their rights had been violated and to order the Respondent State to pay them the sum of Thirty-Three Billion Nine Hundred and Fifty-Five Million Three Hundred and Forty-One Thousand One Hundred and Sixty-Two (33,955,341,162) CFA Francs, which breaks down as follows:

    i. Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA francs as compensation for loss of customary rights awarded by the Court of Appeal of Abidjan;
    ii. Four Hundred and Twenty-Eight Million Ninety-Four Thousand Seven Hundred and Eighty-Nine (428,094,789) CFA francs as statutory interest in respect of the compensation amount;
    iii. Twenty-Nine Million Three Hundred Forty-Nine Million One Hundred Thousand (29,349,100,000) CFA francs as cash compensation in respect of the expropriated land;
    iv. Two Billion (2,000,000,000) as compensation for material damage owing to loss of investment opportunities: CFA francs;
    v. One Billion (1,000,000,000) CFA francs as compensation for moral damage:
    vi. Eighty Million (80,000,000) CFA francs for lawyers' fees in respect of local remedies:
    vii. Eighty-Two Million Six Hundred Thousand (82,600,000) CFA francs as lawyers' fees in respect of the action before this Court;
    viii. One Hundred and Six Million Two Hundred Thousand (106,200,000) CFA francs in respect of fees paid to a real estate expert to evaluate the market value of the land; and
    ix. Ninety-Six Million Eight Hundred and Fifty-Eight Thousand Three Hundred and Seventy-three as costs of enforcement of court decisions or costs of proceedings: (96,858,373) CFA francs.

16. The Respondent State prays the Court to:

i. Declare that it lacks *personal* jurisdiction to examine the alleged violations of Articles 9(1) and 14 of the Charter, in relation to the Respondent State;
ii. Declare the Application inadmissible for failure to exhaust local remedies and for having been filed outside the stipulated time-limit;
iii. Find that the Respondent State did not violate any of the Applicants' rights;
iv. Dismiss the Applicants' financial claims and dismiss all of their claims as unfounded; and
v. Order the Applicants to pay costs.

V. JURISDICTION

17. The Court notes that Article 3 of the Protocol reads 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 instruments ratified by the States concerned.
> 2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

18. Rule 49(1) of the Rules of Court provides that "The Court shall ascertain its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protocol and these Rules".

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

20. In the instant case, the Respondent State raises two objections to jurisdiction, namely, personal jurisdiction and temporal jurisdiction. The Court will rule on the two objections before considering other aspects of its jurisdiction, if necessary.

A. Objection to personal jurisdiction

21. The Respondent State contends that, in principle, the adverse party is committed to the proceedings only after the Application has been notified to it. It is the Respondent State's contention that it was served the present Application on 11 April 2022, more than eleven (11) months after the effective date of withdrawal of its Declaration by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs having observer status with the Commission. The Respondent State asserts that, in these circumstances, it is not involved in the present proceedings and prays the Court to find that it does not have personal jurisdiction to hear this Application.

22. The Applicants did not respond to this objection.

***

23. The Court notes that it has ruled that the withdrawal of the Declaration deposited by the Respondent State under Article 34(6) of the Protocol has no bearing on matters pending before it and on new cases filed prior to the effective date of the withdrawal, which is one year after its filing, that is, on 30 April 2021.[3]

24. The Court recalls that, as it has also held, "the time-limit of 30 April 2021 only relates to the date of filing of an application before it" and therefore its personal jurisdiction is established whenever an application was filed at its

[3] *Suy Bi Gohore and 3 Others v. Côte d'Ivoire*, *supra*, 67.

Registry before the said date of 30 April 2021.[4] Therefore, the notification of an application after the time-limit stated above does not have any bearing on the personal jurisdiction of the Court.

25. In the instant case, the Court notes that the Application was filed with the Registry of the Court on 15 May 2020, that is, eleven (11) months and seventeen (17) days prior to the effective date of withdrawal of the Declaration, which was on 30 April 2021.

26. Accordingly, the Court dismisses the Respondent State's objection and finds that it has personal jurisdiction to hear the Application.

B. Objection to temporal jurisdiction

27. The Respondent State maintains that the violations of the right to property and the right to information, which were alleged to have been committed between 1980 and 1998, predate the entry into force of the Protocol in relation to the Respondent State. It further maintains that the same applies to the other violations alleged by the Applicants, which were allegedly committed after 25 January 2004.

28. The Applicants did not make any submission on this objection.

***

29. The Court recalls that, as it has previously held, it does not have temporal jurisdiction to hear cases concerning violations resulting from an "instantaneous and completed" act which occurred before the entry into force of the Protocol in respect of a Respondent State.[5] Since the

[4] *Kouassi Kouame Patrice and Baba Sylla v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 20.
[5] *Kouadio Kobena Fory v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 34/2017, Judgment of 2 December 2021 (merits and reparations), § 34; *Jebra Kambole v. United Republic of Tanzania,* ACtHPR, Application No. 018/2018, Judgment of 15 July 2020 (merits and reparations), § 24; *Norbert Zongo and others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, §§ 67 and 68.

Respondent State ratified the Protocol on 25 January 2004, the temporal jurisdiction of the Court is established only with respect to alleged violations committed after that date, except if the said violations are continuing.[6] In this regard, the Court has consistently held that even if the alleged violations began before the Respondent State became a party to the Charter and the Protocol, its temporal jurisdiction will be established for the violations that continued after the Respondent State became a party to both instruments.[7]

30. In the instant case, the Court notes that the Respondent State became a party to the Charter on 31 March 1992. On that basis, the Court observes that when the plot of land in question was expropriated in 1980, the Respondent State did not bear any obligation under the Charter.

31. The Court further notes that the expropriation of the Applicants' land, which occurred in 1980, is, by its nature, an instantaneous act that did not continue after the date of entry into force of the Protocol with respect to the Respondent State, which was on 25 January 2004. The Court also observes that the decision to expropriate which was made in 1980 definitively transferred the ownership of the land to the Respondent State, without any basis to consider the continuity of the act.

32. Consequently, the Court considers that it does not have temporal jurisdiction to consider the Applicants' claims in relation to the right of ownership over the expropriated parcel of land, insofar as expropriation is an instantaneous act.

33. With regard to the allegations concerning the Applicants' rights of ownership over the land that was not expropriated but sold to third parties by the Respondent State in 2002**,** the Court notes that as of that date, although the Respondent State was not yet a party to the Protocol, the dispute went through judicial proceedings involving the two parties before the Tribunal of First Instance of Abidjan, which rendered its decision on 16 February 2016.

[6] *Kobena Fory v. Côte d'Ivoire, ibid*, § 32*; Zongo and Others v. Burkina Faso* (merits), *supra*, § 73.
[7] *Kambole v. Tanzania, ibid,* § 24*; Kobena Fory v. Côte d'Ivoire, ibid,* § 33.

The Court thus considers that the violation alleged is continuing in nature and finds that it has temporal jurisdiction.

34. Furthermore, with regard to the right to a fair trial and fair compensation, it emerges from the records that by a judgment of 13 July 2007, the Court of Appeal of Abidjan ordered the Respondent State to pay the Applicants the sum of Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA Francs as compensation for the loss of their customary rights over the expropriated parcel of land. The Court notes from the records that, as at the date of filing of the present Application, the Respondent State had not yet paid the compensation.

35. The Court observes that in such circumstances, the Applicants' rights to compensation, which arose before the entry into force of the Protocol, and their right to execution of the judgment of 13 July 2007, are of a continuing nature as long as the claim remains unenforced and there has not been any judicial action on the same.

36. Accordingly, the Court dismisses the second limb of the objection to its temporal jurisdiction and finds that it has temporal jurisdiction to hear the present Application with respect to the right to ownership over the parcel of land sold to third parties, the right to have one's case heard, the right to dignity, the right to equality before the law and the right to enjoy one's rights and freedoms without discrimination of any kind.

C. Other aspects of jurisdiction

37. The Court notes that the Respondent State does not challenge its material and territorial jurisdiction. However, the Court must examine its jurisdiction over these aspects and ensure that, in accordance with Rule 49(1) of the Rules, the Application is admissible.

38. Having noted that there is no information on record that it does not have jurisdiction on these aspects, the Court holds that it has

i. Material jurisdiction given that the Applicants allege the violation of their rights guaranteed and protected in the Charter, an instrument to which the Respondent State is a party.

ii. Territorial jurisdiction since the violations alleged by the Applicants occurred within the territory of the Respondent State.

39. In light of the foregoing, the Court finds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

40. In accordance with 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".

41. Rule 50(1) of the Rules provides that "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".

42. Rule *50*(2) of the Rules, which restates in substance the provisions of Article 56 of the Charter, provides as follows:

> Applications to the Court shall comply with the following conditions:
> (a) disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> (b) comply with the Constitutive Act of the Union and the Charter;
> (c) not contain any disparaging or insulting language;
> (d) not be based exclusively on news disseminated through the mass media,
> (e) be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> (f) be filed 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; and

(g) not raise any mater or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

43. The Court notes that in the instant case, the Respondent State raises two objections to the admissibility of the Application, which are based on non-exhaustion of local remedies (A) and failure to file the Application within a reasonable time (B).

A. Objection based on non-exhaustion of local remedies

44. The Respondent State submits that the Applicants allege before this Court violations of their rights which were never raised before domestic courts in order to give it an opportunity to remedy them. It is the Respondent State's contention that, at the national level, the Applicants seized the domestic courts seeking compensation for loss of customary rights over a plot of land which they claimed belonged to them, whereas the present Application concerns alleged violations that were committed in connection with domestic proceedings before the Supreme Court and are therefore detachable from the claim for compensation for loss of customary rights.

45. The Respondent State therefore prays the Court to declare the Application inadmissible for failure to comply with the requirement of Article 56(5) of the Charter.

46. The Applicants did not respond to this objection.

***

47. The Court notes that, in accordance with Article 56(5) of the Charter, which is essentially restated in Rule 50(2)(e) of the Rules, applications submitted

to it must meet the requirement of exhaustion of local remedies.[8] The Court further notes that the local remedies to be exhausted are ordinary judicial remedies. Such remedies must be available, that is, they can be pursued by the Applicant without hindrance; effective and satisfactory in the sense that they are capable of satisfying the applicant or remedying the situation in dispute.[9]

48. The issue for determination in the present Application is whether the Applicants should have raised before the domestic courts some of the violations alleged before this Court in order to meet the requirement of exhaustion of local remedies.

49. The Court notes that the violations alleged before this Court concern, on the one hand, the sale of plots that were not expropriated by the Respondent State and, on the other hand, the procedure before domestic courts in respect of the Applicants' compensation.

50. Regarding the allegations of transfer of the non-expropriated part of the land to third parties, the Court notes that after the judgment rendered in their favour on 16 February 2016 by the Tribunal of First Instance of Abidjan, the Applicants did not appeal. The Court thus finds that the Applicants did not exhaust local remedies in respect of this issue.

51. Concerning the alleged violations in connection with the proceedings for compensation before domestic courts, the Court notes that, following the judgment of 13 July 2007 delivered by the Court of Appeal of Abidjan, AGEF lodged a cassation appeal before the Supreme Court, which dismissed the appeal by a judgment of 9 April 2009.

[8] *Kambole v. Tanzania, supra*, § 36*; Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, §§ 65 and 66.
[9] *Kouassi Kouame and Sylla v. Côte d'Ivoire*, *supra*, § 49; *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 84.

52. In these circumstances, the dispute between the Applicants and AGEF was adjudicated by the highest national judicial body, which ruled in favour of the Applicants. As a result, they no longer had any reason to pursue any other local remedy in order to comply with the requirement of Article 56(5) of the Charter.

53. Accordingly, the Court upholds the objection based on non-exhaustion of local remedies in relation to the alleged sale of parcels of land not expropriated by the Respondent State.

54. As regards the alleged violation of the right to be informed of their right to compensation following expropriation, the right to have their cause heard, the right to dignity and the right of all citizens to equality before the law, the Court dismisses the objection and finds that the Application meets the requirement of exhaustion of local remedies under Article 56(5) of the Charter.

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

55. The Respondent State submits that going by the Applicants' averment, the alleged violations were committed during the period between 13 January 2003 and 21 June 2016. According to the Respondent State, the period of almost 4 (four) years that it took the Applicants to file their Application constitutes a very long and unreasonable time. It therefore prays the Court to dismiss the Application for failure to comply with the requirement of Article 56(6) of the Charter and Rule 40(6) of the Rules.

56. The Applicants did not make any submission on this objection.

***

57. It emerges from the record that, following the dismissal of its cassation appeal by the judgement of 9 April 2009, AGEF appealed to the Respondent

State's Attorney General and Minister of Justice for a stay of execution of the Court of Appeal's judgment of 13 July 2007, to allow for a settlement of the dispute on the basis of Section 32 of the Supreme Court Act.[10] By Order of 14 December 2009, AGEF obtained a stay of execution of Court of Appeal's judgment until the settlement case was decided on the merits. On 14 October 2010, the Minister of Justice instructed the Prosecutor General of the Supreme Court to refer the matter to the joint Chambers of the Supreme Court for a ruling.

58. It also emerges from the record that the Prosecutor General did not follow through with the instructions of the Minister of Justice until 21 June 2016, when the President of the Supreme Court quashed the order staying execution of the judgment of 9 April 2009 dismissing the cassation appeal

59. The Court notes that following the Supreme Court's decision, the Applicants, noting that the judgment rendered in their favour had then become enforceable, by letter of 20 November 2017, requested AGEF to pay the sum of one Billion Five Hundred and Fifty-Four Million Four Hundred and Eighty-Six Thousand Seventy-Nine (1,554,486,079) CFA Francs, being the amount awarded by the Court of Appeal plus statutory interest, bailiff's fees and lawyers' fees. The Court also notes that as the said order to pay had not been enforced, the Applicants carried out a seizure attachment on the accounts of AGEF on 18 February 2019.

60. The Court notes that the judgment of 9 April 2009 delivered by the Supreme Court, the highest judicial authority of the country, granted the Applicants' claim. Therefore, they cannot be blamed for exercising an enforcement remedy that was available to them up until 18 February 2019. As such, the

[10] Article 32 of the Supreme Court Act provides that: "Where the cassation appeal is dismissed, the party who lodged the appeal may no longer lodge a cassation appeal in the same case, under any pretext and by any means. The Procurator-General of the Supreme Court, on the request of a higher authority, may refer the matter to the President of the Supreme Court for settlement, where the execution of a decision is likely to seriously disturb public order, economically and socially. The joint Chambers of the Supreme Court, convened by the President and presided over by him, shall rule on the requisitions of the Prosecutor-General. The application of the Prosecutor-General to the President of the Supreme Court shall temporarily suspend the execution of the decision …".

date to be taken into consideration for computing the time-limit for seizing this Court is 18 February 2019. In this regard, the Court notes that it was seized on 15 May 2020. The Court observes that between that date and 18 February 2019, one (1) year, two (2) months and twenty-five (25) days had elapsed.

61. In any event, the Court recalls its jurisprudence in *Sébastien Germain Ajavon v. Republic of Benin* that, where the time-limit in question is relatively short, it must be considered to be manifestly reasonable. In such cases, the Applicant is not compelled to prove that the time was reasonable.[11]

62. In the present case, the Court considers that the period of one (1) year, two (2) months and twenty-five (25) days is reasonable.

63. The Court therefore dismisses the Respondent State's objection and finds that the Application was filed within a reasonable time.

C. Other admissibility requirements

64. The Court notes that there is no dispute as to whether the requirements set out in Rule 50(2), (a), (b), (c), (d), (e), (f) and (g) of the Rules are met. Nevertheless, the Court must satisfy itself that these requirements are met.

65. The Court notes that the Applicants are clearly identified in line with the requirement of Rule 50(2)(a) of the Rules.

66. The Court also notes that the Applicants seek to protect their rights guaranteed under the Charter and other instruments to which the Respondent State is a party. It further notes that one of the objectives of the Constitutive Act of the African Union is the promotion and protection of human and peoples' rights. The Court finds that the Application is consistent

[11] *Sébastien Germain Ajavon v. Republic of Benin*, ACtHPR, Application No. 065/2019, Judgment of 29 March 2021 (merits and reparations), §§ 86 and 87. See also, *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), §§ 53 to 56.

with the Constitutive Act of the African Union and the Charter insofar as it meets the requirements set out in Rule 50(2)(b) of the Rules.

67. The Court further notes that the Application does not contain any disparaging or insulting language directed against the Respondent State, its institutions or the African Union. As such, it complies with the requirement of Rule 50(2)(c) of the Rules.

68. The Court also notes that the Applicants submitted procedural documents as evidence, so that the Application is not based on news disseminated through the mass media. The Application therefore meets the requirement of Rule 50(2)(d) of the Rules.

69. Furthermore, the Court finds that the Application does not deal with a case which has been settled by the States involved in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

70. In light of the foregoing, the Court finds that all admissibility requirements under Article 56 of the Charter as restated in Rule 50(2) of the Rules are met and therefore declares the Application admissible.

VII. MERITS

71. The Applicants allege violation by the Respondent State of their right to be informed of their right to compensation after expropriation, the right to have their cause heard, the right to dignity and prohibition of all forms of degradation, the right of all citizens to equality before the law, and the right to the enjoyment of rights and freedoms. The Court shall examine these allegations in turns.

A. Alleged violation of the right to information

72. The Applicants submit that according to Decree No. 96-884 of 25 October 1996, the loss of customary rights has two components, namely compensation in cash or in kind, on the one hand, and reparation, on the other. They argue that at the time of negotiations for out-of-court settlement, the Respondent State should have informed them that in addition to their right to compensation, they were also entitled to reparation. This, in their view, would have allowed them to better assess their entitlements. The Applicants contend that by failing to inform them of their full rights, the Respondent State violated their right to be informed under Article 9(1) of the Charter.

*

73. The Respondent State submits that the obligation to provide information under Article 9(1) of the Charter means that the State must not impede access to information. It asserts that after the signing of Decree No. 96-884 of 25 October 1996, it was published in the Official Gazette and that it was incumbent upon the Applicants to take note thereof and ascertain their rights. The Respondent State prays the Court to dismiss this allegation.

***

74. Article 9(1) of the Charter provides as follows:

> "1. Every individual shall have the right to receive information."

75. The Court notes that the right to information guaranteed in Article 9(1) of the Charter is based on the principle of knowing, receiving, accessing and disseminating information often required to promote other rights or the exercise thereof. It thus implies a proactive obligation on the part of the

person who holds the information to make it public in order to allow individuals to make informed decisions.[12]

76. In the instant case, the issue that arises is whether, at the time of assessing the entitlements accruing from the expropriation of land, the information on the rights to compensation and reparation was available and accessible to the Applicants to enable them accurately assess their rights guaranteed by Decree No. 96-884 of 25 October 1996.

77. The Court notes that Decree No. 96-884 of 25 October 1996 on expropriation rights was published in the Official Gazette on 14 November 1996. The Court also notes that the amount accruing from the expropriation of the Applicants' land was first fixed by the Tribunal of First Instance of Yopougon in its Judgment of 13 January 2003 at the end of judicial proceedings in which the Applicants were assisted by two lawyers. In this regard, the Court notes that between the date of publication of the Decree of 25 October 1996 and the judgment of the Tribunal of First Instance of Yopougon, a period of at least seven (7) years elapsed. The Court considers that the information requested by the Applicants was available and accessible to all, including their lawyers, and that the Respondent State can therefore not be held accountable for the consequences of the Applicants not exercising their right to compensation before domestic courts.

78. Accordingly, the Court finds that the Respondent State did not violate the Applicants' right to information under Article 9(1) of the Charter.

B. Alleged violation of the right to have their cause heard

79. The Applicants allege that after the 13 July 2007 judicial decision in their favour and the dismissal on 9 April 2009 of the cassation appeal lodged by AGEF, the Respondent State embarked on a series of acts to thwart the execution of the decision upholding their right to compensation. The

[12] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (merits) (2017) 2 AfCLR 165, § 132.

Applicants submit that the non-enforcement of the court decision awarding them the sum of Eight Hundred and Twelve Million, Four Hundred and Eighty-Eight Thousand (812,488,000) CFA Francs is attributable to the Respondent State whose employees, in this case the Prosecutor General, did nothing for more than seven (7) years to convene the joint chambers to rule on AGEF's request.

80. The Applicants aver that even if they were not claimants at this stage of the procedure, they would have wished to defend their case before the joint Chambers within a reasonable time before proceeding to the execution of the judgment of 13 July 2007. The Applicants pray the Court to find a violation of their right to be tried within reasonable time and the right to the enforcement of a decision in their favour under Article 7 of the Charter.

*

81. The Respondent State submits that referral of the matter to the President of the Supreme Court by the Supreme Court Prosecutor General for settlement under Section 32 of the Supreme Court Act is an option that is not time-bound. The Respondent State further submits that the Prosecutor General's failure to refer the matter to the President of the Supreme Court for the purpose of convening the joint Chambers cannot be considered a violation of the rights of the Applicants, insofar as in 2016 they secured a decision quashing the order staying execution of the judgment of 9 April 2009.

***

82. The Court observes that the right to be tried within a reasonable time and the right to the execution of a court decision are two strands of the right to have one's cause heard guaranteed under Article (7)(1) of the Charter. The Court will examine them in turns.

i. The right to be tried within a reasonable time

83. The Court recalls that, as it has previously held, undue delay in proceedings is contrary to the spirit and letter of Article 7(1)(d) of the Charter and, when it is seized with an alleged violation of the right to be tried within a reasonable time, it takes into consideration the nature and circumstances of each case.

84. To that end, the Court takes into consideration, in particular, the complexity of the case or the proceedings relating thereto, and the conduct of the parties themselves in order to determine whether they contributed to the expeditious handling of the said proceedings. The Court also considers the conduct of the judicial authorities to determine whether they "have been passive or clearly negligent"[13] as well as what was at stake for the Parties.

85. In the instant case, the Court notes that after the stay of the judgment dismissing AGEF's appeal, the Minister of Justice, by letter dated 14 October 2010, instructed the Supreme Court Prosecutor General to refer the matter to the joint Chambers of the said Court for settlement. The Court also notes that the Prosecutor General never initiated the procedure for convening the joint Chambers until 21 June 2016 when, upon referral by the Applicants, the President of the Supreme Court quashed the Order staying execution of the judgment of 9 April 2009.

86. The Court considers that a period of five (5) years, eight (8) months and seven (7) days elapsed without the Prosecutor General initiating referral to the joint Chambers. This period amounts to undue delay for such a simple procedure insofar as Section 32 of the Supreme Court Act does not prescribe any requirement that would make the procedure complex thereby warranting such a lengthy period.

[13] *Hamisi Mashishanga v. United Republic of Tanzania*, ACtHPR, Application No. 024/2017, Judgment of 1 December 2022 (merits and reparations), § 66; *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (2018) 2 AfCLR 237, § 38; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73; *Zongo and Others v. Burkina Faso* (merits), *supra*, § 92.

87. In light of the foregoing, the Court finds that the Respondent State violated the Applicants' right to be tried within a reasonable time guaranteed in Article 7(1)(d) of the Charter.

ii. The right to enforcement of a court decision

88. The Court observes that, although Article 7(1) of the Charter does not expressly set out the right to enforcement of a judicial decision, such a right derives from the requirements of a fair trial. In this regard, the Court refers to principles F(2)(g) and P(f)(5) of the Guidelines and Principles on the Right to a Fair Trial adopted by the African Commission on Human and Peoples' Rights, under which the judicial authorities of States parties have an obligation to ensure the supervision of the enforcement of judicial decisions and to avoid unnecessary delays in the enforcement of decisions awarding compensation to victims.[14]

89. The Court notes that after the dismissal of AGEF's appeal against the Court of Appeal's Judgment of 13 July 2007, the said Judgment became enforceable and the Applicants were entitled to claim payment of the sum of Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA francs.

90. The Court also notes that, owing to the Prosecutor General's inaction, the Applicants had to wait more than five years for the decision staying execution of the judgment of 13 July 2027 to be quashed in order to initiate proceedings to enforce their claim which proved unsuccessful. The Court considers that this situation contributed to the non-enforcement of the Court of Appeal's judgment of 13 July 2007 thereby preventing the payment of the compensation obtained by the Applicants against AGEF which, in the meantime, had become insolvent.

[14] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 1999.

91. Consequently, the Court finds that the Respondent State violated the Applicants' right to enforcement of a court decision guaranteed under Article 7(1) of the Charter.

C. Alleged violation of the right to dignity and the prohibition of all forms of degradation

92. The Applicants contend that the Respondent State's imposition of numerous impediments to the payment of their legally recognized and judicially adjudicated rights undermines their dignity. They further contend that the Respondent State's conduct is a form of degradation and moral torture against them, as they find the situation very traumatizing and depressing. For the Applicants, the non-enforcement of the decision of 9 April 2009 for more than 13 (thirteen) years is a form of moral torture and an assault on their dignity. They claim that some of their family members died during the very long wait.

*

93. The Respondent State denies any violation of the Applicants' right under Article 5 of the Charter. It argues that the Applicants cannot hold the Respondent State responsible for the alleged violations of their dignity instead of AGEF, which only resorted to legal procedures to challenge a judicial decision.

***

94. Article 5 of the Charter provides as follows:

> "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

95. The Court recalls that, as it has previously held, in making a general assessment as to whether the right to dignity protected by Article 5 of the Charter has been violated, it considers three main factors. First, Article 5 has no limitation clause. The prohibition of indignity inflicted through cruel, inhuman and degrading treatment is thus absolute. Second, prohibition must be interpreted to afford the widest possible protection against abuse, whether physical or psychological. Lastly, personal suffering and indignity can take various forms and their assessment will depend on the circumstances of each case.[15]

96. The Court further considers that acts of exploitation, degradation, torture or cruel, inhuman or degrading treatment which violate human dignity must be of a certain level of gravity and must have been carried out to such an extent to cause the victim grave suffering or humiliation, thus bringing them shame.[16] The distinction is therefore based on the difference in the intensity of the suffering or the threshold of intolerable suffering intentionally inflicted on the victim.[17]

97. In the instant case, the Applicants do not demonstrate how the failure to pay them compensation for the loss of their rights brought them humiliation, shame or grave suffering to the extent of breaking their physical or moral resistance. They also do not demonstrate how the alleged death of the family members was linked to the non-payment of the compensation amount awarded them by the courts.

98. The Court therefore finds that the Respondent State did not violate the Applicants' right to dignity.

[15] *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 13, § 88; See also *John Modise v. Botswana*, Communication No. 97/93 (2000) AHRLR 30 (ACHPR 2000), para 91.
[16] *Sébastien Germain Ajavon v. Republic of Benin* (merits) (2019) 3 AfCLR 136, § 254. See also *Media Rights Agenda v. Nigeria*, Communication No. 224/98 (2000) AHRLR 262 (ACHPR) 2000), para 71

D. Alleged violation of the right to equality before the law

99. Referencing Law No. 71-340 of 12 July 1971 and its implementing Decree No. 71-341 of 12 July 1971 on expropriation and Decree No. 2013-224 of 22 March 2013, the Applicants contend that they were discriminated against in relation to other citizens whose land was also expropriated by the Respondent State. They cite, as an example, the case of the owners of the land used for the construction of the Soubré dam as well as the owners of the land used for the construction of the fourth bridge over Ebrié Lagoon in Abidjan, who, the Applicants claim, were relocated to other parcels of land and were paid compensation amounts prior to the commencement of construction work.

100. The Applicants submit that, as far as they are concerned, the Respondent State did not compensate or relocate them prior to occupation of their land. The Applicants pray the Court to find that the Respondent State treated them differently in relation to others in a similar situation, thereby violating Article 3 of the Charter.

*

101. The Respondent State maintains that the Applicants' situation does not fall under expropriation procedure but rather relates to the execution of a court decision. It further submits that the expropriation procedure provided by law was applied to all those who were affected by State investments and were compensated according to the procedures in force.

***

102. The Court recalls that equal protection of the law and non-discrimination presuppose that all are subject to the law and that the law applies to all equally without discrimination. It also recalls that equal protection of the law

and equality before the law presuppose that persons in a similar or identical situation not be treated differently.[18]

103. In the present case, the Court notes that expropriation of the Applicants' land took place in 1988 under Law No. 71-340 of 12 July 1971 and its implementing Decree 71-341 of 12 July 1971, whereas the situations to which they compare their case occurred later, that is, in December 1997 and March 2020, under Decree No. 96-884 of 25 October 1996. On this point, the Court considers that the conditions under which the Applicants' property was expropriated are not identical to those to which they compare theirs, insofar as Decree No. 71-341 of 12 July 1971, unlike Decree No. 96-884 of 25 October 1996, did not contain any express provision on the extinction of customary rights.

104. Regarding the extinction of customary rights on expropriated land, the Court notes that following Decree No. 96-884 of 25 October 1996, the Administrative Commission provided for in Article 5 of the said Decree, which is responsible for identifying expropriated land and the owners thereof for purposes of determining compensation and reparation, initiated discussions with the Applicants with a view to compensating them. On 13 January 2003, the Tribunal of First Instance of Yopougon delivered its judgement in which it fixed the compensation amount.

105. The Court observes that although the Applicants were not compensated prior to the 1988 constructions, they were subsequently compensated after the 1996 Decree, based on the provisions of that Decree.

106. Accordingly, the Court finds that the Respondent State did not violate the Applicants' rights to equality before the law and the right to equal protection of the law protected under Article 3 of the Charter.

[18] *Thomas v. Tanzania* (merits), *supra*, § 140; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 85.

E. Alleged violation of the right to enjoyment of rights and freedoms

107. The Applicants allege that not only did the Respondent State "forcibly take over" their land by preventing them from developing or selling it, but that it also refuses to pay the compensation awarded them by the courts after all attempts to evade the obligation to pay the said amount had failed. They argue that such conduct amounts to a violation of Article 2 of the Charter.

*

108. The Respondent State submits that in return for expropriation of their lands, the Applicants obtained a court decision granting them fair compensation of Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA francs. For the Respondent State, the Applicants had full latitude to enforce the court decision rendered in their favour insofar as, on 18 February 2019, they carried out seizure-attachment on AGEF's accounts. The Respondent State prays the Court to dismiss the Applicants' request.

***

109. Article 2 of the Charter provides that:

> "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."

110. The Court recalls that, as it has previously held, Article 2 of the Charter strictly proscribes any distinction, exclusion or preferential treatment based on race, colour, sex, religion, political opinion, national or social origin which has the effect of nullifying or impairing equal opportunity or treatment in the enjoyment of rights. The Court has also held that the right not to be

discriminated against is linked to the right to equality before the law and to equal protection of the law guaranteed in Article 3 of the Charter.[19]

111. The Court observes that in the present case, and contrary to the Applicants' allegations, the expropriation was ultimately followed by compensation at the end of a judicial procedure to which they were parties. The Court also recalls that it has found earlier in the present judgment that the Respondent State did not violate the Applicants' rights to equality before the law and equal protection of the law guaranteed under Article 3 of the Charter.

112. Consequently, as the Court did not find any discriminatory treatment directed against the Applicants in the enjoyment of their rights, it finds that the Respondent State did not violate Article 2 of the Charter.

VIII. REPARATIONS

113. The Applicants pray the Court to order the Respondent State to pay them reparation for the loss of customary rights plus statutory interest, pecuniary reparation, costs of proceedings before domestic courts as well as reparation for moral damage.

114. For its part, the Respondent State prays the Court to dismiss the Applicants' requests for reparations.

***

115. Article 27(1) of the Protocol provides that:

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

[19] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (2017) 2 AfCLR 9, §§ 137 -138.

116. The Court recalls its earlier judgments and reiterates its position that, "to examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damaged caused to the victim."[20]

117. In the present case, the Court found a violation by the Respondent State of the Applicants' rights under Article 7(1)(d) of the Charter.

118. The Court also recalls that reparations "… must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed".[21]

119. The Court stresses that measures that a State may take to redress a human rights violation may include restitution, compensation and rehabilitation of the victim, measures of satisfaction, as well as measures to ensure non-repetition of violations, taking into account the circumstances of each case".[22]

120. The Court recalls that the general rule in matters of material damage is that there must be a causal link between the alleged violation and the prejudice caused, and the burden of proof is on the Applicant who has to justify his prayers.[23]

121. The Court has also established that there is no need to prove moral prejudice as the latter is assumed once a violation is established in favour

---

[20] *Mohamed Abubakari v. United Republic of Tanzania (*reparations) (2019) 3 AfCLR 334, § 19; *Alex Thomas v. United Republic of Tanzania* (reparations) (2019) 3 AfCLR 287, § 11; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 13, § 19*; Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (2018) 2 AfCLR 202, § 19.

[21] *Abubakari v. Tanzania* (reparations), *supra*, § 20; *Thomas v. Tanzania* (reparations), *supra*, § 12; *Umuhoza v. Rwanda* (reparations), *supra*, § 20; *Rashidi v. Tanzania* (merits and reparations), *supra,* § 118.

[22]*Abubakari v. Tanzania* (reparations), *supra*, § 21; *Thomas v. Tanzania* (reparations), *supra*, § 13; *Umuhoza v. Rwanda* (reparations)*, supra*, § 20*.*

[23] *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014), 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15; *Abubakari v. Tanzania* (reparations), *supra*, § 22; *Thomas v. Tanzania* (reparations), *supra*, § 14.

of the Applicant and the burden of proof to the contrary lies with the Respondent State.

122. It is in light of these findings and principles that the Court will consider the Applicants' claims for reparation.

A. Material prejudice

123. The Applicants pray the Court to grant them reparation for material damage as follows: (i) compensation for the loss of customary rights plus statutory interest; (ii) pecuniary reparation; (iii) costs in respect of domestic proceedings; (iv) costs of executing court decisions; and (v) experts' fees.

i. Compensation for loss of customary rights and statutory interest

124. The Applicants pray the Court to order the Respondent State to pay them the net sum of Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA Francs for the loss of customary rights, which was awarded to them by the Court of Appeal of Abidjan in 2007 and confirmed by the Supreme Court in 2009.

125. Moreover, the Applicants point out that under Ivorian law, a litigant may request that interest be applied to a sum of money that has been granted by court decision or in any other way which the debtor has failed to pay in a timely manner. The Applicants therefore pray the Court to order the Respondent State to pay them, in addition to the compensation for loss of customary rights, the sum of Four Hundred and Twenty-Eight Million Ninety-Four Thousand Seven Hundred and Eighty-Nine (428,094,789) CFA Francs being the total amount of default interest calculated on the basis of the Central Bank of West African States (BCEAO) applicable from 2007 to 2020, the date the Applicants filed the present Application.

***

126. The Court recalls that in the instant case, it has found that the Respondent State violated the right of the Applicants to the enforcement of a court decision by its actions and inactions which resulted in the non-payment of compensation for the loss of customary rights on the expropriated parcel of land. The Court notes that the compensation amount was pegged at Eight Hundred and Twelve Million Four Hundred and Eighty-Eight Thousand (812,488,000) CFA Francs as averred by the Applicants and confirmed by the Respondent State, as it emerges from the copies of the judgments of the Court of Appeal of Abidjan and the Supreme Court.

127. Accordingly, the Court finds that the Respondent State should execute the judgment of 13 July 2007 rendered by the Court of Appeal and pay the Applicants the full compensation amount for the loss of their customary rights.

128. As regards the default interest, the Court notes that failure to pay a debt within the specified periods obliges the debtor to pay, in addition to the principal, default interests based on the Central Bank interest rate, in this case, that of the Central Bank of West African States. Thus "in a case of an obligation to pay interest at the statutory rate, this interest is increased by half [...] with effect from the day that the court decision becomes binding".[24] In this case, the Court deems that the default interest payable by the Respondent State to the Applicants runs from 9 April 2009, that is, the day on which the appeal against the judgment of the Court of Appeal was dismissed and thus became binding, up to the date of the judgment in the present Application.

129. The Court further notes that, from year to year, between 2009 and 2023, the BCEAO interest rate varied as follows: 3.75% for the years 2009, 2015 to 2017, 3.72% for 2010 and 2011; 3.55 for the years 2012-2013-2014-2018; 4.505% for 2019-2020 and 2021; 4% in 2022-2023. These different interest

[24] See Article 2 of Law 77-523 of 30 July 1977 as modified by Law 2005-555 of 2 December 2005 concerning the fixing of statutory interest rates, limitation of the conventional interest rate and repression of usurious operations.

rates applied to the awarded amount of Eight Hundred and Twelve Million Four Hundred and Eighty-eight Thousand (812,488,000) CFA Francs indicate an increase by half in the interest, in other words, by Two Hundred and Thirty-five Million, Three Hundred and Sixty-six Thousand, Eight Hundred and Five (235,366,805) CFA Francs.

130. The Court therefore considers that the Applicants are entitled to the payment of Two Hundred and Thirty-Five Million, Three Hundred and Sixty-Six Thousand, Eight Hundred and Five (235,366,805) CFA Francs as interest on the principal debt for late payment.

ii. Compensation

131. The Applicants submit that the loss of customary rights over their land was merely remedied by compensation without considering their right to reparation which must be determined according to their future level of development in accordance with Article 6 of Decree No. 2013-224 of 22 March 2013. They maintain that, according to experts, the land in question is on average currently valued at One Hundred Thousand (100,000) CFA francs per square metre. They therefore pray the Court to order the Respondent State to pay them the sum of Twenty-Nine Billion Three Hundred Forty-Nine Million One Hundred Thousand (29,349,100,000) CFA francs.

*

132. The Respondent State maintains that the expert report relied upon by the Applicants was not ordered by a court and was not cross-checked in a manner that would make it enforceable against the Respondent State. The Respondent State further contends that the Applicants are not entitled to compensation that they did not bother to claim before domestic courts.

***

133. The Court recalls that, in the instant case, it has found that the Applicants, who were assisted by two lawyers before domestic courts, cannot hold the Respondent State liable for the failure to claim their rights to compensation in the reparation proceedings.

134. Accordingly, the Court dismisses the Applicants' prayer to order the Respondent State to pay them the sum of Twenty-Nine Billion Three Hundred Forty-Nine Million One Hundred Thousand (29,349,100,000) CFA francs.

iii. Costs in respect of domestic proceedings

135. The Applicants submit that on 23 September 2019, they entered into a fee agreement with Advocate Benoit Aké's law firm for the sum of Eighty Million (80,000,000) CFA Francs in respect of local remedies and pray the Court to order the Respondent State to reimburse them the said costs.

*

136. The Respondent State prays the Court to dismiss the Applicants' claim on the ground that bringing the case before courts without seeking legal aid meant that they had sufficient financial resources.

***

137. The Court recalls its jurisprudence according to which reimbursement of costs is part of the concept of reparation such that once the said costs are stated, it could order the Respondent State to pay compensation to the victim.[25]

138. In the instant case, the Court notes that it emerges from the records that on 23 September 2019, a fee payment agreement was signed between the

[25] *Umuhoza v. Rwanda* (reparations), *supra*, 37.

Applicants and one of the lawyers who pleaded their case before domestic courts. Under the terms of this fee agreement, the Applicants undertake to pay the latter the sum of Eighty Million (80,000,000) CFA Francs.

139. The Court notes, however, that it emerges from the records that, before the Court of Appeal in 2007 and before the Supreme Court in 2009, the Applicants were assisted by two law firms. It is therefore surprising that it was on 23 September 2019, that is, twelve (12) years later, that the Applicants and the lawyer representing one of the two firms signed the fee agreement for services rendered in 2007 and 2009. Furthermore, the Court observes that the Applicants have not submitted any evidence showing that since 2007, the lawyers have at least received an advance on their fees.

140. Accordingly, the Court finds no evidence for this expenditure and dismisses the request for reimbursement.

iv. Costs of enforcement of judgments and costs of proceedings

141. The Applicants submit that on several occasions court bailiffs tried in vain to make AGEF or the Respondent State pay them the compensation amount awarded for loss of customary rights. The Applicants pray the Court to order the Respondent State to pay them the sum of Ninety-Six Million Eight Hundred and Fifty-Eight Thousand Three Hundred and Seventy-Three (96,858,373) CFA francs being the costs of processing and serving the judgment of the Supreme Court as well as costs of proceedings.

142. The Respondent State contests the Applicants' request and maintains that enforcement of the decision was incumbent upon AGEF, which is a company with public financial participation, having legal personality and financial autonomy.

***

143. The Court recalls that the costs and expenses of executing judgments are part of the costs of the proceedings and may be reimbursed if they are

established, backed by supporting documents and if the Court finds a causal link to the violation found. In the instant case, the Court notes that it has found a violation of the Applicants' right to execution of the court decision rendered in their favour.

144. The Court notes that in the records, the costs of the bailiff's writ are shown as follows: (i) 80,000 CFA Francs in respect of service of the Judgment of the Abidjan Court of Appeal of 13 July 2007; (ii) 80,000 CFA Francs in respect of service of the Judgment of 9 April 2019 on 11 April 2019; (iii) 156,000 CFA Francs in respect of the writ of 18 February 2019 for seizure-attachment of receivables from the accounts of AGEF and (iv) 647,000 CFA Francs in respect of the writ of service relating to the payment order addressed to AGEF.

145. Having considered all of the foregoing, the Court notes that the total amount in respect of bailiff's writ is Nine Hundred and Sixty-Three Thousand (963,000) CFA Francs.

146. Accordingly, the Court orders the Respondent State to reimburse the Applicants the sum of Nine Hundred and Sixty-Three Thousand (963,000) CFA Francs being costs incurred in respect of bailiff's services.

v. Expert fees

147. The Applicants aver that they hired an expert to evaluate the expropriated land for which they did not receive compensation in accordance with the law. They aver that the expert's invoice amount is One Hundred and Six Million Two Hundred Thousand (106,200,000) CFA Francs and request that the Respondent State be ordered to pay the said amount.

148. The Respondent State maintains that the expert opinion unilaterally ordered by the Applicants is not enforceable against it and prays the Court to dismiss the Applicants' prayer.

149. The Court recalls that any prayer for reparation must be linked to the violation of a human right established by the Court. In the instant case, the Court found that the Respondent State did not violate the Applicants' right to be informed of their right to compensation as provided for in the 1996 Decree.

150. Accordingly, the prayer for payment of the expert's fees is dismissed.

vi. Loss of investment opportunity

151. The Applicants argue that if they had actually received the sum of Eight Hundred and Twelve Million Four Hundred and Eighty-eight Thousand (812,488,000) CFA Francs in 2007, they would have invested it in various profitable ventures, such as real estate projects, on the remaining ten (10) hectares of their land. It is the Applicants' contention that this sum would have constituted a good financial basis for their banks to trust them with substantial loans to fund large-scale real estate projects. The Applicants further contend that the Respondent State's bad faith caused them to miss out on that opportunity. They therefore pray the Court to grant them the sum of Two Billion (2,000,000,000) CFA Francs as reparation for the harm resulting from this loss of opportunity.

*

152. The Respondent State submits that regarding the payment of the sum of Eight Hundred and Twelve Million Four Hundred and Eighty-eight Thousand (812,488,000) CFA Francs, the Applicants have already carried out a seizure-attachment of AGEF's accounts and that it is in no way concerned by the unsuccessful outcome of the seizure. The Respondent State prays the Court to dismiss the Applicants' prayer.

***

153. The Court recalls that, as it has previously held, that the loss of opportunity implies the deprivation of a potential with a reasonable probability of occurrence and not a certainty. It must be established that the harm suffered nullified the probability that a positive event will occur …".[26] In the instant case, the Court found that by obstructing the payment of the Applicants' claim, the Respondent State violated their right to execution of a court decision guaranteed in Article 7(1)(d) of the Charter.

154. The issue here is whether there was evidence, or at least indications, that the Applicants actually intended to invest or bank the amount awarded them by the domestic courts for loss of customary rights.

155. The Court notes that to justify the alleged harm, the Applicants merely assert that they would have invested the sum of Eight Hundred and Twelve Million Four Hundred and Eighty-eight Thousand (812,488,000) CFA Francs in profitable ventures such as real estate development, without proving whether in the interval between the Supreme Court's decision in 2009 and the day of referral to this Court they developed or designed an investment plan that was likely to be profitable.

156. The Court further notes that the Applicants submitted a list of thirteen (13) of their family members who died while awaiting payment of the claim without ever enjoying their share of their family entitlements. It follows from this assertion that even if the Applicants had been paid the compensation amount awarded for loss of customary rights, it is unlikely that they would have invested or banked the entire amount. However, the Court considers that the possibility of investing at least part of the claim, even if not certain, exists with a reasonable probability of occurrence.

157. In view of these findings, the Court considers that in the present case, the Applicants are entitled to reparation for loss of investment opportunity.

[26] *Sébastien Germain Ajavon v. Republic of Benin* (reparations) (2019) 3 AfCLR 196, § 56.

158. Regarding the quantum of compensation, the Court recalls that the Applicants assess the amount of their loss at Two Billion (2,000,000,000) CFA Francs.

159. The Court recalls its jurisprudence that in computing the quantum of reparation for loss of opportunity, it takes into account the amounts requested by the Applicant, provided that the Applicant's expectation derive from, and are based on the computation that generated the amount claimed.[27]

160. In the instant case, the Applicants have not provided the Court with any indication of the calculation that led to the amount claimed. However, the Court observes that even if the Applicants were to deposit the amount of Eight Hundred and Twelve Million Four Hundred and Eighty-eight Thousand (812,488,000) CFA francs in the bank, over a period of thirteen (13) years, the amount in respect of the accrued interest at rates ranging from 3.5 to 4.5% applicable in WAEMU Member States banks cannot amount to the Two Billion (2,000,000,000) CFA francs claimed.[28]

161. Given the above, the Court, based on equity and its discretionary power, awards the Applicants a lump sum reparation of Five Million (5,000,000) CFA Francs excluding taxes, for loss of investment opportunity.

B. Moral prejudice

162. The Applicants aver that thirteen (13) years of courts proceedings caused them significant moral damage. They maintain that their opponent was the Respondent State, which used all means of public authority to discourage, humiliate, frustrate and intimidate them. The Applicants further aver that the Respondent State treated them with deep contempt in the instant case, whereas they were only claiming and defending their ancestral and family lands.

[27] *Ajavon v. Benin* (reparations) (2019), *supra*, § 61.
[28] The interest would be 475,305,480 CFA francs in time deposit account over 13 years.

163. The Applicants assert that today they have all aged, that they are tired and frustrated owing to the Respondent State's bad faith. For all this moral damage they pray the Court to award each of the two Applicants the sum of Five Hundred Million (500,000,000) CFA Francs.

*

164. The Respondent State contends that it did not violate any of the Applicants' rights and therefore the Applicants did not suffer any damage. The Respondent Sate prays the Court to dismiss the claim for moral damage.

***

165. The Court recalls its jurisprudence that there is a presumption of moral prejudice suffered by an applicant when the Court finds that his rights have been violated, such that there is no need to seek to establish the link between the violation and the harm suffered. The Court has also held that the assessment of the amounts to be awarded as reparation for moral damage should be made on equitable basis taking into account the circumstances of each case.[29]

166. In the instant case, the damage suffered by each of the Applicants results from the Court's finding of a violation of their right to execution of a court decision guaranteed in Article 7(1)(d) of the Charter.

167. Accordingly, the Court awards the Applicants the lump sum of Three Million (3,000,000) CFA Francs as reparation for the moral harm they suffered.

[29] *Ajavon v. Benin* (reparations) (2019), *supra*, § 89; *Kobena Fory v. Côte d'Ivoire* (merits and reparations), *supra*, § 102.

IX. COSTS

168. The Applicants submit that with regard to the proceedings before the Court, they incurred expenses in respect of lawyers' fees, air travel to Arusha to file the Application, hotel expenses, car rental and utilities. For all these expenses, they pray the Court to order the Respondent State to reimburse them the sum of Eighty-Two Million Six Hundred Thousand (82,600,000) CFA Francs.

169. The Applicants further pray the Court to order the Respondent State to pay them the sum of Ninety-Six Million Eight Hundred and Fifty-Eight Thousand Three Hundred and Seventy-Three (96,858,373) CFA Francs in respect of costs.

*

170. The Respondent State submits that by filing an application before this Court without seeking legal aid, the Applicants prove that they are financially endowed. The Respondent State prays the Court to dismiss the Applicants' prayers and order them to pay costs.

***

171. Rule 32(2) of the Rules provides that "Unless otherwise decided by the Court, each party shall bear its own costs".

172. As the Court recalled earlier in this judgment, any claim for pecuniary reparation or reimbursement of procedural costs must be backed by supporting documents.[30] In the instant case, the Court notes that although the Applicants might have incurred costs in respect of the present proceedings, they did not provide any evidence in support of the said costs.

[30] *Ajavon v. Benin* (reparation), *supra*, § 142; *Umuhoza v. Rwanda* (reparations), *supra*, § 40; and *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 81.

173. Consequently, the request for reimbursement of costs of proceedings before this Court is dismissed for lack of supporting documents.

174. As regards the request for payment of the sum of Ninety-Six Million Eight Hundred and Fifty-Eight Thousand Three Hundred and Seventy-Three (96,858,373) CFA Francs in respect of costs, this Court observes that proceedings before it are free of charge and the parties are never required to make any deposit.

175. In light of the above, the Court dismisses the Applicants' prayer.

176. Accordingly, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

177. For these reasons:

THE COURT

Unanimously,

On jurisdiction

i. *Dismisses* the objections to personal and temporal jurisdiction;
ii. *Finds* that it has jurisdiction.

On admissibility

iii. *Upholds* the objection based on non-exhaustion of local remedies in relation to the alleged violation of the right of ownership over the parcel of land sold to third parties*;*

iv. *Dismisses* the other objections to the admissibility of the Application;

v. *Finds* the Application admissible.

On merits

vi. *Holds* that the Respondent State did not violate the Applicants' right to information guaranteed in Article 9(1) of the Charter;

vii. *Holds* that the Respondent State did not violate the Applicants' right to dignity guaranteed in Article 5 of the Charter;

viii. *Holds* that the Respondent State did not violate the Applicants' right to equality before the law, guaranteed in Article 3 of the Charter;

ix. *Holds* that the Respondent State did not violate the Applicants' right to the enjoyment of the rights and freedoms guaranteed in Article 2 of the Charter;

x. *Holds* that the Respondent State violated the Applicants' right to be tried within reasonable time guaranteed in Article 7(1)(d) of the Charter;

xi. *Holds* that the Respondent State violated the Applicants' right to the execution of a court decision guaranteed in Article 7(1) of the Charter.

On reparations

Material damage

xii. *Dismisses* the prayer for compensation;

xiii. *Dismisses* the prayer for reimbursement of lawyers' fees in respect of proceedings before domestic courts;

xiv. *Dismisses* the prayer for reimbursement of expert's fees;

xv. *Orders* the Respondent State to execute Judgment No. 407 of the Court of Appeal of Abidjan of 13 July 2007, rendered in the matter of *AGEF v. BAEDAN Dogbo Paul et al.;*

xvi. *Awards* the Applicants the amount of Two Hundred and Thirty-five Million, Three Hundred and Sixty-Six Thousand, Eight Hundred and Five (235,366,805) CFA Francs as interest on the principal debt for late payment.

xvii. *Awards* the Applicants the sum of Nine Hundred and Sixty-Three Thousand (963,000) CFA Francs as reimbursement of costs in respect of bailiff's services;

xviii. *Awards* the Applicants the sum of Five Million (5,000,000) CFA Francs as reparation for loss of investment opportunity.

Moral prejudice

xix. *Orders* the Respondent State to pay each of the Applicants the sum of Three Million (3,000,000) CFA Francs as reparation for moral damage suffered.

On costs

xx. Dismisses the prayer for reimbursement of procedural costs*;*

xxi. *Holds* that each Party shall bear its own costs.

On implementation and reporting

xxii. Orders the Respondent State to pay all the net amounts stated in paragraphs xv, xvi, xvii and xix of this Operative Part, exclusive of tax, within six (6) months from the date of notification of this judgment, failing which it will also be required to pay default interest calculated on the basis of the applicable rate of the Central Bank of West African

States (BCEAO), for the entire period of delay and until full payment of the sums due;

xxiii. *Orders* the Respondent State to submit to the Court, within six (6) months from the date of service of this judgment, a report on the status of implementation of the decisions contained therein and thereafter, every six (6) months, until the Court considers that all its decisions have been fully implemented.

Signed:

Imani D. ABOUD, President;

Modibo SACKO, Vice-President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

Done at Arusha, this fifth day of September in the year two thousand and twenty-three, in English and French, the French text being authoritative.