

IN THE MATTER OF SEBASTIEN GERMAIN AJAVON V. REPUBLIC OF BENIN

APPLICATION NO 013/2017

JUDGEMENT (REPARATIONS) OF 28 NOVEMBRE 2019

DISSENTING OPINION BY JUDGE GERARD NIYUNGEKO

1. I concur with the decisions of the Court on reparations in favour of the Applicant, *except* for the amount of Thirty Billion (30 000 000 000) CFA Francs granted as reparation of the prejudice for the loss of investment opportunity in the oil sector on the one hand (paragraph iii.5 of the operative part), and on the other, in regard to the amount of Three Billion (3 000 000 000) CFA Francs granted as reparation for moral prejudice suffered by the Applicant (paragraph iv.3 of the operative part). In my opinion, these amounts are excessive and cannot be objectively justified.

I. Reparation of prejudice relating to the loss of investment opportunity in the oil sector

2. It emerges from the case file, that in 2016, the Applicant's company, *Common SA*, reached with *Philia Group Ltd*, within the framework of a partnership, a confidentiality agreement to cover all confidential information exchanged between the two structures as regards oil commercialization projects, and then a Memorandum of Understanding (MOU) for the establishment of a roadmap to carry out all the activities related to the two projects through a joint venture platform [paragraph 46 of the Judgement].

3. It further emerges from the case file that as a result of criminal proceedings initiated against the Applicant by the Respondent State in the matter of suspected drug trafficking, *Philia Group Ltd* announced the suspension, with immediate effect, of all ongoing negotiations or commercial discussions with the Applicant in relation to these projects [paragraphs 51 and 52 of the Judgement].

4. As the Court noted, there is no doubt that the Applicant suffered a loss in business opportunities [paragraphs 54 and 55 of the Judgement]. Furthermore, there is no doubt that the Applicant is entitled to reparation in this regard [paragraph 59 of the Judgement].

5. The Applicant claims pecuniary reparation of One Hundred and Fifty Billion (150 000 000 000) CFA Francs [paragraph 60 of the Judgement]. However, as we have noted, the Court granted him a lump sum of Thirty Billion (30 000 000 000) CFA Francs. To justify its decision, the Court stated that it based it, *inter alia*, on the following: the amounts