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

Pursuant to Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court<sup>1</sup> (hereinafter referred to as "the Rules"), Judge Modibo SACKO, member of the Court and a national of Mali, did not hear the application.

In the Matter of:

CONFEDERATION SYNDICALE DES TRAVAILLEURS DU MALI

Represented by Yacouba Traoré, Secretary General of the National Federation of Mines and Energy

Versus

REPUBLIC OF MALI

Represented by EX-AEQUO Law Firm

After deliberation,

*Delivers the following Ruling:*

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<sup>1</sup> Rule 8(2) of the Rules of 2 June 2010.

## I. THE PARTIES

1. The Confédération Syndicale des Travailleurs du Mali (CSTM), (hereinafter referred to as "the Applicant"), is a group of affiliated trade unions in the formal and informal sectors. It is challenging its exclusion from membership of the Economic, Social and Cultural Council (hereinafter "ESEC") of the Republic of Mali.
2. The Application is brought against the Republic of Mali (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 21 October 1986 and to the Protocol on 20 June 2000. The Respondent State also deposited, on 19 February 2010, the Declaration provided for in Article 34(6) of the Protocol, by which it recognises the Court's jurisdiction to entertain applications from individuals and Non-Governmental organisations with observer status before the African Commission on Human and Peoples' Rights.

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. The Applicant submits that since the creation of the ESEC in 1998, the Confederation Syndicale des Travailleurs du Mali (hereinafter referred as "Confédération") was excluded from ESEC in 1999, 2004 and 2009, although according to the Respondent Constitution, the ESEC is made up of representatives of public and parastatal bodies, as well as trade unions.
4. The Applicant avers that, in an attempt to assert the Confédération's rights, an application was filed with the Respondent State's Supreme Court for recourse for abuse of power against Decree No. 99-272 of 20 September

1999 by which the President of the Republic excluded the Confederation from membership of ESCC. The Applicant further submits that the Supreme Court annulled the decree by Judgment No.76 of 15 August 2002.

5. The Applicant further contends that, following this judgment, Decree No. 04-415/PRM of 23 September 2004 listing the members of the ESCC was issued, which decree again excluded the Confederation thus compelling it to bring another action before the Respondent Supreme Court for abuse of power. The Supreme Court annulled the decree by Judgment No. 135 of 16 August 2007.
6. According to the Applicant, the International Labour Organization (ILO) Committee on Freedom of Association, which was seized of the matter, recommended in its 359<sup>th</sup> report of 2011 that the Respondent State include the Confederation on the list of ESCC representatives, in accordance with the Supreme Court judgments.
7. The Applicant further submits that the Confederation was also excluded from the Arbitration Councils of the joint tripartite institutions or bodies, including the Institut National de Prévoyance Sociale (INPS), [the National Social Insurance Institute], the Caisse Malienne de Sécurité Sociale (CMSS) [the Malian Social Insurance Fund] and the Caisse Nationale d'Assurance Maladie (CANAM) [the National Health Insurance Fund].
8. In view of all the above alleged violations of laws, decrees and orders, the Applicant prays the Court to find that the Confederation must be included in these bodies.

## **B. Alleged violation**

9. The Applicant alleges a violation of Article 7 of the Charter.

### III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was received at the Registry on 6 April 2017 and was served on the Respondent State on 1 November 2017.

11. The submissions and exhibits submitted by the parties were duly notified. On 7 May 2021, pleadings were closed and the parties were duly notified.

### IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to:

- i. Find that it has jurisdiction;
- ii. Declare the Application admissible;
- iii. Find that the Confederation must be a member of the CESC.

13. In terms of reparations, the Applicant prays the Court to:

- i. Order the Respondent State to pay the sum of one billion (1,000,000,000) CFA francs as damages for excluding the Confederation from the joint and tripartite bodies, namely, *l'Agence Nationale* (ANPE), [The National Employment Agency], the *Caisse nationale* (CANAM), [The National Health Insurance Fund], the *Institut national de Prévoyance Sociale* (INPS), [National Social Insurance Institute] and the *Fonds d'appui à la professionnelle* (FAFPA) [Vocational Training Support Fund];
- ii. Order the Respondent State to pay the Confederation the sum of six hundred and forty-eight million (648,000,000) CFA francs as arrears of the subsidies from the joint bodies;
- iii. Order the Respondent State to include the Confederation in the said bodies.

14. For its part, the Respondent State prays the Court to:

- i. Find that it lacks jurisdiction;
- ii. Rule the Application inadmissible;
- iii. Dismiss the Applicant's claims as being unfounded.

## V. JURISDICTION

15. 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, this 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.

16. Under Rule 49(1) of the Rules of Court<sup>2</sup>, The Court shall conduct a preliminary examination of its jurisdiction and the admissibility of an Application in accordance with the Charter

17. Based on the above provisions, the Court must, in each application, ascertain its jurisdiction and rule on objections to its jurisdiction, if any.

18. The Court notes that the Respondent State raised an objection questioning the Court's jurisdiction.

### A. Objection alleging lack of personal jurisdiction

19. The Respondent State raises an objection alleging lack of Court's personal jurisdiction on the ground that the Applicant is not an NGO with observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") and as such, cannot bring a case before the Court under Article 5(3) of the Protocol.

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<sup>2</sup> Rules of 25 September 2020 corresponding to Rule 39(1) of the Rules of 2 June 2010.

20. In its reply, the Applicant concurs that it is a trade union and that it is not an NGO with observer status before the Commission. For this reason, it requests the Court to substitute the identity of the Applicant with those of twenty seven (27) natural persons, namely *Hammadoun Amion Guindo and 26 others*.<sup>3</sup>

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21. The Court notes that Article 3 (3) of the Protocol states:

The Court may entitle relevant Non Governmental Organization (NGOs) with observer status before the Commission, and individual to institute cases directly before it, in accordance with Article 34 (6) of this Protocol.

22. The Court notes that the Applicant itself concedes that it is not an NGO with observer status before the Commission and can therefore not bring proceedings before the court within the meaning of above mentioned provisions. Accordingly, the Court cannot hear the instant Application.<sup>4</sup>

23. In any case, the request for substitution of the identity of natural persons for that of the Applicant cannot be granted insofar as the rights alleged in the Application are intrinsically inherent to the trade union nature of the Applicant and are not those of natural persons.

24. Accordingly, the Court finds that it lacks jurisdiction to hear the instant Application.

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<sup>3</sup> Their names are the following: Hawa SOW, Nassoum KEÏTA, Fadaman KEÏTA, Almoubachar HAÏDARA, Sitan DIAKITE, Oumar Barou DIALLO, Yacouba TRAORE, Daouda CISSE, Amadou COULIBALY, Mahamane KOUNTA, Dramane DIARRA, Moussa DOUMBIA, Tiédiougou J. DIARRA, Boulkassoum MAÏGA, Aboubacar S. DOUMBIA, Daouda NDIAYE, Mahamady SOSSOKHO, Aïssata BA, Saran COULIBALY, Soumana I. MAÏGA, Souleymane I. MAÏGA, Souleymane TRAORE, Daouda SOW, Ibrahim CISSE, Issiaka Moussa KABORE, Modibo KEÏTA et Rokia CAMARA.

<sup>4</sup> *Association Juristes d'Afrique pour la Jurisdiction (Gouvernarn* (June 2016), 1 AfCLR 26, §§ 8-9 ; *Convention Nationale des Syndicats du Secteur Education (CONASYSED) v. Gabon* (jurisdiction) (11 December 2011), 1 AfCLR 100, § 8.



## VI. COSTS

25. The Applicant requests the Court to order the Respondent State to bear the costs of proceedings.

26. The Respondent State on the other hand prays the Court to dismiss the Application.

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27. The Court notes that under Rule 32(2) of the Rules,<sup>5</sup> "unless otherwise decided by the Court, each party shall bear its own costs, if any."

28. In the instant case, the Court considers that, having found that it lacks jurisdiction, there is no reason to depart from the principle laid down in the above-mentioned Rule.

29. The Court, therefore, rules that each Party shall bear its own costs.

## VII. OPERATIVE PART

30. For these reasons,

THE COURT

*Unanimously*

*On jurisdiction*

- i. *Finds* that it lacks jurisdiction.
- ii. *Dismisses* the Application.

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<sup>5</sup> Rule 30 of the former Rules.

