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

SUY BI GOHORE EMILE AND OTHERS

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION No. 044 / 2019

JUDGMENT

15 JULY 2020

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The Court composed of: Ben KIOKO, Vice-President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD – 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 8(2) of the Rules of Court (hereinafter referred to as "the Rules"), Judge Sylvain ORÉ, President of the Court and national of Côte d'Ivoire did not hear the Application.

In the matter of:

Gohoré Emile SUY BI AND OTHERS

Represented by:

i. Mr. Jean-Chrysostome BLESSY, Advocate of the Côte d'Ivoire Bar;
ii. Mr. Amany KOUAME, Advocate of the Côte d'Ivoire Bar; and
iii. Mr. Messan TOMPIEU, Advocate of the Côte d'Ivoire Bar.

versus

REPUBLIC OF CÔTE D'IVOIRE

Represented by:

i. Mr. Zirignon Constant DELBE, Magistrate, Technical Adviser to the Minister of Justice and Human Rights, Keeper of the Seals;
ii. Mr. Abdoulaye MEITE, Advocate of the Côte d'Ivoire Bar;
iii. Mr. Mamadou SAMASSI, Advocate of the Côte d'Ivoire Bar;
iv. Mr. Patrice GUEU, Advocate of the Côte d'Ivoire Bar; and
v. Mr. Mamadou KONE, Advocate of the Côte d'Ivoire Bar.

After deliberation,

Renders the following Judgment:

I. THE PARTIES

1. Messrs SUY Bi Gohoré Emile, KAKOU Guikahué Maurice, KOUASSI Kouamé Patrice, KOUADJO François, YAO N'guessan Justin Innocent, GNONKOTE Gnessoa Désiré, DJEDJE Mady Alphonse, SORO Kigbafori Guillaume and TRAZERE Olibe Célestine (hereinafter referred to as "the Applicants") are nationals of the Republic of Côte d'Ivoire. They challenge the independence and impartiality of their country's electoral commission.

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 "the Charter") on 31 March 1992 and to the Protocol on 25 January 2004. On 23 July 2013, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and non-governmental organisations (hereinafter referred to as the "Declaration"). Meanwhile, on 29 April 2020, the Respondent State deposited, with the African Union Commission, an instrument withdrawing its Declaration.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It is alleged in the Application that between 21 January and 26 June 2019, the Respondent State organised a political dialogue process to reform the Independent Electoral Commission. Thereafter, a new law on the recomposition of the Independent Electoral Commission (herein after referred to as "IEC") was passed by the National Assembly on 30 July 2019 and by the Senate on 2 August

2019. It was then promulgated by the President of the Respondent State on 5 August 2019 as Law N°2019-708.

4. The Applicants submit that on 2 August 2019 one member of the National Assembly averring to represent sixty-five (65) other members of the National Assembly petitioned the Constitutional Council of the Respondent State on the non-conformity of Articles 5, 16 and 17 of the said law with Articles 4, 53 and 123 of the Respondent State's Constitution.

5. According to the Applicants, the Constitutional Council of the Respondent State declared on 5 August 2019 the petition inadmissible on the ground that it made reference to a draft version of the impugned law while the Constitutional Council does not decide on the constitutionality of draft laws.

6. From the record before the Court it emerges that on 6 August 2019 the same applicants in that case filed another petition to the Constitutional Council that referred to the actual law adopted by parliament instead of the draft law.

7. The Applicants submit that on 13 August 2019 the Constitutional Council declared the petition again inadmissible for the reason that the law had already been promulgated and that it does not have the power to assess the constitutionality of a law that has already been promulgated by the President.

8. The record also shows that on 4 March 2020 the Respondent State adopted Order N° 2020/306 which modified Law N° 2019-708 of 5 August 2019 on the recomposition of the Independent Electoral Commission by giving opposition parties or political groupings the possibility of proposing one additional personality to the electoral body, both at the level of the Central and the Local electoral commissions.

9. Furthermore, the present Application relies on the judgment delivered by this Court on 18 November 2016 in the matter of *Action pour la Protection des Droits*

de l'Homme (APDH) v Côte d'Ivoire (merits)[1] concerning the composition of the Electoral Commission of the Respondent State and on this Court's judgment of 28 September 2017 to interpret said judgment.[2]

10. The Court had found in its judgment in *APDH v Côte d'Ivoire* (merits) that the Respondent State had violated its obligation to establish an independent and impartial electoral body, and consequently, also violated its obligation to protect the right to participate freely in the government of the country. Moreover, the Court found that the Respondent State had violated the obligation to protect the right to equal protection of the law. The Court therefore ordered the Respondent State to amend Law no. 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the relevant human rights instruments to which it is a Party.[3]

11. In its judgment in *APDH v Côte d'Ivoire* (interpretation) the Court declared the request for an interpretation of the aforesaid judgment inadmissible as it did not relate to any of the operative provisions of the Judgment.[4]

B. Alleged violations

12. In the instant matter the Applicants allege that the Respondent State has violated:

i. Its obligation to create an independent and impartial electoral body as provided for under Article 17 of the African Charter on Democracy, Elections and Governance (hereinafter referred to as "ACDEG") and Article 3 of the ECOWAS Protocol on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution,

[1] See *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668.
[2] See *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (interpretation) (2017) 2 AfCLR 141.
[3] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668 § 153.
[4] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (interpretation) (2017) 2 AfCLR 141 § 18-19.

Peacekeeping and Security (hereinafter referred to as “ECOWAS Democracy Protocol”);

ii. Its obligation to protect citizens’ right to participate freely in the government of their country as provided under Article 13(1) and (2) of the Charter;

iii. Its obligation to protect the right to equal protection of the law, as provided under Article 10(3) of the ACDEG, Article 3(2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as the “ICCPR”); and

iv. Its commitment to comply with the judgment of the Court in a case to which it was a party within the time stipulated by the Court and to guarantee its execution in accordance with Article 30 of the Protocol.

III. SUMMARY OF PROCEDURE BEFORE THE COURT

13. On 10 September 2019, an Application was filed which also contained a request for provisional measures.

14. On 19 September 2019, the Application was served on the Respondent State and the latter was invited to respond to the request for provisional measures within seven (7) days and to the Application within sixty (60) days of receipt of the notice.

15. On 24 September 2019, the Applicants filed an amended Application, requesting that it replace the one filed on 10 September 2019.

16. On 25 September 2019, the Registry notified the Respondent State of the amended Application and invited it to respond within fifteen (15) days to the request for provisional measures and within sixty (60) days to the Application.

17. The Respondent State filed its Response to the request for provisional measures in the initial Application on 1 October 2019 and to the request for provisional measures in the amended Application on 15 October 2019.

18. On 18 October 2019, the Applicants filed their Reply to the Response from the Respondent State on the request for provisional measures.

19. On 7 November 2019, the Respondent State filed a Rejoinder to the Reply of the Applicants.

20. On 28 November 2019, the Court by an order rejected the request for provisional measures on the basis that it did not reveal a situation of gravity or urgency that would pose a risk of irreparable harm to the Applicants or the social order.[5] On 28 November 2019, the Respondent State filed its Response to the Application.

21. On 27 February 2020, the Applicants filed their Reply to the Respondent State's Response.

22. On 5 March 2020, the Registry notified the Parties of the closure of written pleadings.

23. On 12 March 2020, the Court held a public hearing. Before the hearing, the Court, pursuant to Rule 57 of the Rules and Article 9 of the Protocol, tried unsuccessfully to initiate an amicable settlement between the parties.

IV. PRAYERS OF THE PARTIES

24. The Applicants pray the Court to:

i. find a violation of the human rights instruments referred to in paragraph 12;
ii. order the Respondent State to amend, before any election, Law No. 2019-708 of 5 August 2019 on the recomposition of the IEC, to make it compliant with the human rights instruments mentioned in paragraph 12; and
iii. impose a deadline on the Respondent State to implement the above order and submit to the Court a report on its implementation.

[5] *Gohore Emile Suy Bi and Others v. Republic of Côte d'Ivoire,* AfCHPR, Application No. 044/2019, Ruling of 28 November 2019 (Provisional Measures) § 34.

25. The Respondent State prays the Court to:

i. declare that it lacks jurisdiction;
ii. declare the Application inadmissible; and
iii. declare that the Application is unfounded and, accordingly, dismiss it.

V. JURISDICTION

26. The Court observes 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.

27. The Court further observes that in terms of Rule 39(1) of the Rules "[t]he Court shall conduct preliminary examination of its jurisdiction ..."

28. Therefore, the Court must first ascertain its jurisdiction in accordance with the Charter, the Protocol and the Rules, and dispose of objections, if any, to its jurisdiction.

A. Objection to the Court's material jurisdiction

29. The Respondent State raises an objection to the material jurisdiction of the Court because the Application is primarily based on allegations that it violated Article 30 of the Protocol.

30. According to the Respondent State, the Applicants are seeking the Court to order the suspension of the application of Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC, as long as it is not amended to be compliant with the Court's judgement of 18 November 2016.

31. This means, in the view of the Respondent State, that the Applicants are requesting the Court to monitor the execution of its judgments despite there being no provision, either in the Charter or in the Protocol, that confers such a competence on the Court.

32. The Respondent State maintains that the enforcement of judgments lies outside the jurisdiction of international courts and further asserts that judgments of international human rights courts, just as those of the International Court of Justice, are only of a declaratory nature. It adds that States are merely required to produce the results required by these judgments and are free to choose the necessary means and measures in their domestic legal systems to comply with the courts' orders. Accordingly, international courts do not have the authority to annul or repeal State laws that do not comply with the international instruments these courts are mandated to protect.

33. For the Respondent State, that is exactly what would happen if the Court were to order a State not to implement a law as long as that law has not been amended in the way prescribed by a previous judgment.

34. With regard to the African system for the protection of human rights, the Respondent State refers to a division of competences between the Member States and the Court. In its view, the Protocol mandated the Assembly of Heads of State and Government (hereinafter referred to as "the Assembly") to monitor the execution by Member States of the judgments of the Court in accordance with Article 29(2) and Article 31 of the Protocol.

35. For the Respondent State, it therefore follows that the Court does not have the jurisdiction to monitor the execution of its judgments. The execution or non-execution of the Court's judgments does not constitute a human right enshrined in the Charter or any other relevant human rights instrument that the Court is entitled to apply under Article 3 of the Protocol.

36. The Respondent State also claims that this provision must be read together with Article 27(1) of the Protocol. According to the Respondent State, these provisions

of the Protocol establish a direct relationship between the decision of the Court and a “violation of a human or peoples' right”. Therefore, the jurisdiction of the Court cannot be established beyond a violation of human rights.

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37. The Applicants submit that the Application submitted to this Court only concerns violations contained in human rights instruments to which the Respondent State is a State Party, specifically the Charter, the Protocol, the ACDEG, the ECOWAS Democracy Protocol, and the ICCPR. Therefore, according to them the Court has material jurisdiction to hear the case.

38. Furthermore, the Applicants dispute the arguments of the Respondent State concerning the Court’s jurisdiction to interpret and apply Article 30 of the Protocol. They contend that to answer the question whether the Court has jurisdiction to rule on the execution of its own judgments, an important distinction needs to be made between whether the judgment to be executed has led to a new dispute submitted to the Court or not.

39. The Applicants observe that pursuant to Article 29(2) of the Protocol, judgments rendered by the Court are notified to the Council of Ministers (hereinafter referred to as the “Executive Council”) which is responsible for ensuring their execution.

40. Based on an examination of the provisions of the Charter, the Rules and the Protocol, the Applicants concede that the Court has no jurisdiction to rule on the execution or non-execution of its judgements. Therefore, the Court cannot rule on the compliance of possible legal reforms ordered in a judgment such as those imposed in the judgment in *APDH v Côte d’Ivoire* (merits). The Court can only report to the Assembly.

41. Similarly, if at the expiration of the time limit imposed by the Court the Respondent State has not begun any kind of reform, the Applicants maintain that the Court cannot demand the Respondent State to execute its judgment.

42. However, the Applicants claim that the situation is different when new Applicants refer a new law to the Court; especially, when the adoption of that new law resulted from the Respondent State's intention to execute the respective order by the Court.

43. In support of their position, the Applicants refer to Rule 26 of the Rules which for the Applicants, clearly establishes that the interpretation and application of the Protocol falls within the jurisdiction of the Court.

44. Therefore, the Applicants submit that when a new case is submitted to the Court which deals with the question whether or not the Respondent State has fulfilled its commitment to comply with a judgment in accordance with Article 30 of the Protocol, the Court has the power to rule on this matter because it relates to the interpretation and application of the Protocol.

45. Considering that the present case involves new litigation based on a new law adopted by the Respondent State with the aim of fulfilling its obligation under Article 30 of the Protocol, the Applicants maintain that the Court is within the limits of its jurisdiction set out in Rule 26 of the Rules, to judge whether or not the Respondent State complied with the Court's previous judgment within the prescribed time limit and in conformity with the terms set out.

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46. The Court observes that its material jurisdiction is not disputed concerning the violations alleged of the Charter, the ACDEG, the ECOWAS Democracy Protocol and the ICCPR which are all instruments to which the Respondent State is a Party. Specifically, the Respondent State became a Party to the Charter on 31 March 1992, to the ACDEG on 28 November 2013, to the ECOWAS Democracy Protocol on 31 July 2013, and to the ICCPR on 26 March 1992.

47. However, the Respondent State contests the Court's jurisdiction to hear this matter, because it allegedly lacks the jurisdiction to monitor the execution of its judgments, which, for the Respondent State, constitutes the essence of this

Application. Accordingly, the Court notes that the Respondent State contests its jurisdiction to establish a violation of Article 30 of the Protocol.

48. The Court recalls that pursuant to Article 3(2) of the Protocol, "[i]n the event of a dispute as to whether the Court has jurisdiction, the Court shall decide".

49. In addressing issues of compliance with its judgments, the Court needs to take Articles 29, 30 and 31 of the Protocol into consideration.

50. Article 29 of the Protocol stipulates that the Executive Council shall "be notified of the judgment and shall monitor its execution on behalf of the Assembly."

51. Article 30 of the Protocol provides: "[t]he States parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution."

52. Article 31 of the Protocol obliges the Court to "submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment."

53. While the Respondent State disputes the Court's jurisdiction to monitor the execution of its judgments, the question that arises, is whether the Court can successfully fulfil its obligation provided for under Article 31 of the Protocol to report to the Assembly, if it cannot determine the status of compliance with its judgments before submitting the report.

54. The Court further considers that the division of competences between itself and Executive Council, raised by the Respondent State, can reasonably be described in terms of complementarity. Accordingly, the mandate of the Executive Council to monitor the execution of judgments, pursuant to Article 29 of the Protocol, does not prevent the Court from making a determination whether a State has or has not complied with its judgment, as provided for under Article 31 of the Protocol.

55. While the Protocol does not prescribe how the Court should proceed to make the determination of the degree of compliance with its judgments, the Court, like other international human rights courts, has developed a practice, where it orders Respondent States to report on the implementation of its decisions within a specified time.[6]

56. The Court notes that such reports assist it in fulfilling its obligation of reporting on States' non-compliance with its judgments, especially since it does not have its own enforcement mechanism.

57. The Court also observes that according to Article 3(1) of the Protocol:

> 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." [Emphasis added]

58. Accordingly, the Protocol does not make a distinction between the type of cases or disputes submitted to the Court, as long as it concerns the application and interpretation of any of the instruments listed in Article 3 of the Protocol. In the instant case, a dispute is submitted to the Court concerning the application and interpretation of Article 30 of the Protocol, an instrument clearly listed in Article 3 of the Protocol.

59. Furthermore, the Court notes that Article 30 of the Protocol explicitly imposes an obligation on States to comply with its judgments. In fact, it considers that this obligation constitutes the *conditio sine qua non* of any international litigation. It is the existence of this duty that distinguishes international judicial mechanisms from quasi-judicial mechanisms that are not authorised to issue binding decisions. In other words, the Court distinguishes itself from other mechanisms

[6] See, for example, *Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R Mtikila v. Tanzania* (merits) (2013) 1 AfCLR 34, § 126; *Lohé Issa Konaté v. Burkina Faso* (merits) (2014) 1 AfCLR 314, § 176; *Association pour le Progrès et la Défense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa v. Mali* (merits) (2018) 2 AfCLR 380, § 135.

that do not have the authority to make decisions that carry an explicit obligation of compliance with their decisions.

60. Therefore, considering the obligation to execute the Court's judgments, which generally imposes a duty on States to remedy established human or peoples' rights violations, the Court also holds that a violation of Article 30 of the Protocol is tantamount to a "violation of a human or peoples' rights", as referred to in Article 27(1) of the Protocol.

61. Accordingly, the Court holds that it is within its jurisdiction to find a violation of Article 30 of the Protocol, based on which the Court "shall make appropriate orders to remedy the violation," in accordance with Article 27(1) of the Protocol.

62. Through a combined reading of Articles 3, 27(1) and 30 of the Protocol, the Court finds that it has material jurisdiction in a case or dispute submitted to it, to establish whether or not a State has complied with its judgment within the time stipulated, and make appropriate orders to remedy the violation, if necessary.

63. For the above reasons and considering that the instant Application constitutes a new dispute in relation to the matter of *APDH v Côte D'Ivoire,* based on new factual and legal circumstances, and considering that all the alleged violations concerns human rights instruments to which the Respondent State is a Party, the Court holds that it has material jurisdiction to examine the Application.

B. Other aspects of jurisdiction

64. The Court notes that other aspects of its personal, temporal and territorial jurisdiction are not in contention between the Parties. Nonetheless, it has to satisfy itself that it has jurisdiction in those aspects.

65. Concerning its personal jurisdiction, the Court notes that the Respondent State is a Party to the Protocol and deposited the Declaration on 23 July 2013.

66. The Court also notes that on 29 April 2020, the Respondent State deposited, with the African Union Commission, an instrument withdrawing its Declaration.

67. The Court recalls that in *Ingabire Victoire Umuhoza v Rwanda*,[7] it held that the withdrawal of the Declaration does not have any retroactive effect and it also has no bearing on matters pending before it prior to the filing of the Declaration, as is the case in the present Application. The Court also confirmed that any withdrawal of the Declaration takes effect twelve (12) months after the deposit of the instrument of withdrawal.[8]

68. In respect of the Respondent State having deposited its instrument of withdrawal of the Declaration on 29 April 2020, this withdrawal will thus take effect on 30 April 2021 and will in no way affect the personal jurisdiction of the Court in the instant case.

69. Concerning its temporal jurisdiction, the Court notes that the alleged violations occurred subsequent to the entry into force in respect of the Respondent State of the international instruments mentioned in paragraph 12.

70. Regarding its territorial jurisdiction, the Court notes that the facts of the matter took place in the territory of the Respondent State.

71. In view of the foregoing, the Court concludes that it has jurisdiction to examine this Application.

VI. ADMISSIBILITY OF THE APPLICATION

72. A preliminary issue was raised by the Respondent State concerning the admissibility of an amended Application submitted by the Applicants to replace the initial Application. The Court will first deal with this issue, before it considers other aspects of the admissibility of the Application.

[7] *Ingabire Victoire Umuhoza v. Rwanda* (jurisdiction) (2016) 1 AfCLR 562 § 67.
[8] See also *Ghati Mwita v. United Republic of Tanzania*, AfCHPR, Application No. 012/2019, Ruling of 9 April 2020 (provisional measures) § 4.

A. Preliminary issue on the replacement of one Application with another

73. The Respondent State raises an objection to the admissibility of the Application based on Article 26(1) of the Protocol which provides "[t]he Court shall hear submissions by all parties."

74. The Respondent State notes that the Applicants filed before the Court an initial Application on 10 September 2019 together with a request for provisional measures.

75. The Respondent State also avers that the Applicants filed a subsequent application before the Court on 24 September 2019 whereby it requested the Registry to consider the latter as a replacement of the initial one. This subsequent Application was then registered under the same reference number as the initial Application.

76. According to the Respondent State, the initial Application created a legal relationship between the parties before the Court. As a result, this relationship creates rights and obligations for the parties and for the Court.

77. The Respondent State claims that the withdrawal of the initial Application is not based on any known procedural rule as it is neither a withdrawal of the proceedings nor a discontinuance within the meaning of Rule 58 of the Rules.

78. The Respondent State maintains that it had neither been notified of the Court's decision to acknowledge the Applicants' intention not to proceed with the case nor of the Court's decision to strike out the initial Application from the cause list.

79. In addition, the Respondent State claims that the unilateral and secret withdrawal of an Application and its subsequent replacement by another Application, cannot be admissible because these actions are not compatible with the Respondent State's rights to fair proceedings.

80. The Respondent State asserts that it has been wrongfully deprived of its right to rebut the withdrawal and replacement of the initial Application in violation of Article 26 of the Protocol. Therefore, it prays the Court to rule on the merits of the initial Application and find the subsequent Application inadmissible.

81. The Applicants maintain that when they resubmitted their Application, the Respondent State had not yet responded to the initial Application. Therefore, it cannot be concluded that the Respondent State had initiated any proceedings at the time the amended Application was filed before the Court. Accordingly, its consent was not required for the subsequent Application to be admitted.

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82. The issues to be determined by the Court concern the alleged secrecy of the replacement of the Application and the admissibility of the amended Application.

83. The Court observes that to rule on these issues Rules 35(2) and 36(1) need to be taken into consideration.

84. Rule 35(2) of the Rules stipulates:

> Unless otherwise decided by the Court, the Registrar shall forward copies of the application where applicable to the: a) State Party against which the application has been filed, in accordance with Rule 34 (6) of these Rules; […]

85. Rule 36(1) of the Rules provides: "All pleadings received by the Registrar shall be registered and a copy thereof transmitted to the other party."

86. The Court notes that the Applicants filed an Application on 10 September 2019 which was transmitted to the Respondent State, pursuant to Rule 35(2) and Rule 36(1) of the Rules. It also notes that on 24 September 2019 the Applicants filed an amended Application before the Court. The Applicants requested the Registry to consider the latter as a replacement of the initial one. This amended

Application was then registered by the Registry under the same reference of the initial Application.

87. The Court also takes note that the amended Application and its registration was duly transmitted to the Respondent State on 25 September 2019, in accordance with Rule 35(2) and Rule 36(1) of the Rules, almost a week before the Respondent State filed its Response on 1 October 2019 to the request for provisional measures contained in the initial Application.

88. The Court further notes that on 15 October 2019 the Respondent State filed its response to the request for provisional measures contained in the amended Application.

89. Therefore, the Court finds the Respondent State's allegation that the replacement was done secretly, as baseless.

90. Furthermore, the Court notes that in its communication about the amended Application, it extended the time lines for the Respondent State to file both its Response to the request for provisional measures within fifteen (15) days and its Response on the merits within sixty (60) days of receipt of the notification transmitting the amended Application. Accordingly, the Respondent State was not deprived of the time needed to respond to the amended Application. Therefore, the Court finds that no prejudice has been caused to the Respondent State by the replacement of the Application.

91. For these reasons, the Court dismisses the Respondent State's objection to the admissibility of this Application based on this ground.

B. Admissibility of the Application based on the provisions of Article 56 of the Charter

92. According to Article 6(2) of the Protocol: “The Court shall rule on the admissibility of a case taking into account the provisions of Article 56 of the Charter.”

93. Furthermore, under Rule 39 of the Rules, "*the Court shall make a preliminary examination (...) of the conditions of admissibility of the Application as provided for in Articles … 56 of the Charter and Rule 40 of these Rules* "

94. Rule 40 of the Rules which essentially restates the contents of Article 56 of the Charter, provides that:

> Pursuant to the provisions of Article 56 of the Charter to which Article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:
>
> 1. disclose the identity of the Applicant notwithstanding the latter’s request for anonymity;
> 2. comply with the Constitutive Act of the Union and the Charter;
> 3. not contain any disparaging or insulting language;
> 4. not be based exclusively on news disseminated through the mass media;
> 5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> 6. 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;
> 7. not raise any matter 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.

95. The Court notes from the records that compliance with sub-rules 1, 2, 3, 4, 5, 6 and 7 of Rule 40 of the Rules is not in contention between the Parties. Nevertheless, the Court must still ascertain that the requirements of the said sub-rules have been fulfilled.

96. Specifically, the Court observes that, according to the file, the condition laid down in Rule 40(1) of the Rules is fulfilled since the Applicants have clearly indicated their identity.

97. The Court finds that the requirement laid down in paragraph 2 of the same Rule is also met, since no request made by the Applicants is incompatible with the Constitutive Act of the Union or with the Charter.

98. Neither does the Application contain any disparaging or insulting language with regard to the State concerned, which makes it consistent with the requirement of Rule 40(3) of the Rules.

99. Regarding the condition contained under paragraph 4 of same Rule, the Court notes that the application is not based exclusively on news disseminated through the mass media. The Applicants base their claims on legal grounds in support of which official documents are adduced, as required under Rule 40(4) of the Rules.

100. Concerning the condition of exhaustion of local remedies, provided in Rule 40(5) of the Rules, the record shows, in reference to Article 113 of the Constitution of the Respondent State, that no local remedies exist, since no action can be initiated by individuals against a law that has already been promulgated. Accordingly, the Court finds that this condition has been met.

101. Pursuant to Rule 40(6) of the Rules, the Court will consider the date of promulgation of the impugned law as the commencement of the time limit within which it shall be seized with the matter. The Court finds that the filing of the Application within a month and a half after the promulgation of the impugned law is reasonable and therefore considers that Rule 40(6) has been fulfilled.

102. Finally, with respect to the requirement laid down in Rule 40(7) of the Rules, the Court needs to satisfy itself that the present Application does not concern a case which has already been 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.

103. The present Application refers to the judgment delivered by this Court on 18 November 2016 in *Action pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire (Merits),* concerning the composition of the Electoral Commission and to the Court's judgment on 28 September 2017 in *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* (interpretation). The Court thus needs to ensure that the instant Application does not raise any matters or issues that have been previously settled by these judgments.

104. The Court recalls that in its earlier decisions in *Gombert Jean-Claude Roger v Republic of Côte d'Ivoire*[9] and *Dexter Eddie Johnson v Republic of Ghana*,[10] it developed three cumulative criteria to determine whether the admissibility criteria established in Article 56(7) and Rule 40(7) have been met.

105. In Paragraph 48 of its ruling in *Dexter Eddie Johnson v. Republic of Ghana:*

> [t]he Court notes that the notion of "settlement" implies the convergence of three major conditions: (1) the identity of the parties; 2) identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the initial case; and 3) the existence of a first decision on the merits.

106. Regarding the first criterion, "identity of the parties", the Court notes in the instant case that although the Respondent State is the same, the Applicants are different. In the judgement in *APDH v Côte D'Ivoire* (merits), the Applicant was Actions pour la Protection des Droits de l'Homme (APDH) which presents itself as an Ivorian Non-Governmental Human Rights Organisation which has Observer Status before the African Commission on Human and Peoples' Rights. In the current Application, the Applicants are nine Ivorian individuals.

[9] *Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (2018) 2 AfCLR 270, § 45.
[10] *Dexter Eddie Johnson v. Republic of Ghana,* AfCHPR, Application No. 016/2017, Ruling of 28 March 2019 (jurisdiction and admissibility) § 48.

Furthermore, nowhere in the file before the Court is a connection between APDH and the Applicants suggested, let alone established. However, since both the current Application and *APDH v. Côte D'Ivoire* (merits) can be qualified as public interest cases, the "identity of the parties", can be considered as being similar, to the extent that they both aim to protect the interest of the public at large, rather than only specific private interests. Therefore, the Court holds that the criteria of "identity of parties" has been met.

107. The second criterion concerns the similarity of the Application. While it is undisputed that the current Application is largely concerned with a similar subject-matter, namely the independence and impartiality of the Respondent State's electoral body, the Court still needs to determine whether the legal and factual elements of the Application are the same.

108. In the instant Application, the Court notes that the legal and factual basis to decide on the independence and impartiality of the Respondent's electoral body are not the same. According to the Applicants, no Application concerning Law No. 2019-708 of 5 August 2019 relating to the recomposition of the IEC has ever been filed. The Court also notes that the Application in *APDH v Côte D'Ivoire* (merits) contested Law 2014-335 of 18 June 2014 on the Independent Electoral Commission.

109. Therefore, considering that the Applicants contest a new law which was adopted after the 2017 judgment and considering that subsequent events have changed the factual situation previously known to the Court, the Court finds that the second criterion has not been met.

110. Concerning the third criterion which interrogates whether a first decision on merits exists, the Court observes that no decision exists concerning the conformity between the impugned new law on the electoral body of 2019 and the international legal instruments invoked by the Applicants. Therefore, the Court finds that this criterion has not been met.

111. In sum, the Court finds that the cumulative criteria set out in the cases *Gombert Jean-Claude Roger v Republic of Côte d'Ivoire* and in *Dexter Eddie Johnson v. Republic of Ghana* relating to the admissibility requirement established in Article 56(7) and Rule 40(7), have not been fulfilled. Therefore, considering that the instant Application does not raise any issue or matter previously settled in the sense of Article 56(7), the Court holds that this admissibility requirement is met.

112. Based on the foregoing, the Court finds that the Application meets all the conditions set out in Article 56 of the Charter and accordingly declares it admissible.

VII. MERITS

113. The Applicants allege that by adopting Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC, the Respondent State has violated its obligation to establish an independent and impartial electoral body, its obligation to protect the right to freely participate in government, its obligation to protect the right to equal protection of the law, and its commitment to execute judgments, as prescribed by Article 17 of the ACDEG, Article 3 of the ECOWAS Democracy Protocol, Article 13(1) and (2) of the Charter, Article 10(3) of the ACDEG, Article 3(2) of the Charter, Article 26 of the ICCPR and Article 30 of the Protocol, respectively.

114. The Respondent State submits, however, that the aforementioned law has been modified during the course of the proceedings before this Court by Order N° 2020-306 of 4 March 2020 amending Articles 5, 15, 16, and 17 of Law No. 2019-708 of 5 August 2019 on the recomposition of the IEC. According to the Respondent State this change of the impugned law effectively renders the Application without merit since the provisions of the law allegedly in violation of the abovementioned human rights instruments are no longer in force.

115. Considering that the objection raised by the Respondent State affects the basis of the Application, the Court will deal with it first.

A. The effect of the adoption of Order N° 2020-306 of 4 March 2020 on the Application

116. The Respondent State contends that the Application has become without merit since the law questioned by the Applicants has been modified by Order N° 2020-306 of 4 March 2020 and the relevant provisions on which the Applicants base their allegations have been abrogated.

117. The Respondent State also notes that the change of the law was not made out of necessity because the older law failed to establish a balanced composition of the electoral body. Instead, the Respondent State argues that the change of the law was carried out in line with its international human rights commitments to raise the standards of its electoral body.

118. Nonetheless, the Respondent State maintains that the Court cannot base itself on the arguments pertaining to the law of 2019 because all the provisions on which the Court would rely in handing down its judgment are no longer in force. Accordingly, the Respondent State prays the Court to finds the Application without merit.

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119. The Applicants contest the objection by the Respondent State and assert that the Order N° 2020-306 of 4 March 2020 does not modify in any way the arguments brought before this Court regarding the violations alleged in their Application.

120. The Applicants first contend that they refer in the Application to the same law. Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC has now simply been modified by the Order N° 2020-306 of 4 March 2020, but essentially remains the same law. For the Applicants, these modifications do not repeal the law itself which governs the composition of the electoral body and which is impugned in their Application, the impugned law has only been modified in part, therefore the Application can in no way be found to be without merit.

121. The Applicants also assert that the modifications of the impugned law do not have a material effect on the arguments put before the Court, because even with the amendments, the impugned law still fails to establish an independent and impartial electoral body as required by the abovementioned human rights instruments to which the Respondent State is a Party.

122. They further contend that the modifications to the law and the manner in which it was altered, strengthens their argument that the law of 2019 failed to establish an independent and impartial electoral body and that the unilateral amendment of the law by the government without any form of dialogue underscores the dependence of the electoral body on the government.

123. Finally, the Applicants note that they also base their argument on provisions of the impugned law that have not been amended by the Order N° 2020-306 of 4 March 2020. For example, the Applicants argue that the electoral body also lacks administrative and financial autonomy and the provisions regulating these matters have not been altered by the Order N° 2020-306 of 4 March 2020.

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124. The Court notes that the instant Application concerns the alleged violation of the Respondent State's obligation to establish an independent and impartial electoral body.

125. The Court also notes that the Applicants as well as the Respondent State have referred at different times in their submissions to the general legal framework governing the structure and functioning of the electoral body. For example, the Applicants refer to Article 40 of the Law on the Composition, Organisation, Powers and Functioning of the IEC of 9 October 2001 (which has subsequently been modified) to challenge its financial autonomy. Whereas the Respondent State refers to Article 1(2) of the same law to support its argument that the electoral body is institutionally independent. The Court observes that neither of these two Articles have been amended by Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC nor by Order N° 2020-306 of 4 March 2020.

126. In view of the foregoing, the Court holds that an amendment of certain provisions which only partially constitute the legal framework of the electoral body, does not render the Application without merit.

127. Considering the position of the Applicants whereby they hold that amendment of the legal framework governing the electoral body as amended by the Order N° 2020-306 of 4 March 2020 does not modify their claims, and considering the position of the Respondent State that the amendment of the law raised the standards of the electoral body even further, the Court finds that it may proceed with this case, taking into consideration the legal framework governing the electoral body currently in force. Accordingly, it dismisses the prayer of the Respondent State to find the Application without merit

B. Alleged violation of the obligation to establish an independent and impartial electoral body

128. The Applicants aver that the Respondent State has violated its obligation to establish an independent and impartial electoral body provided for under Article 17 of the ACDEG and Article 3 of the Democracy Protocol.

129. The Applicants contend that the electoral body of the Respondent State does not meet the criteria set out in the respective international human rights instruments or the criteria established in the jurisprudence of the Court on the establishment of an independent and impartial electoral body.

130. The Applicants contend that the Respondent State failed to constitute the electoral body in a way that its composition offers sufficient guarantees of the independence and impartiality of its members so as to reassure the public of its ability to organise transparent, free and fair elections (i). They also claim that the electoral body lacks institutional independence as revealed by its insufficient administrative and financial autonomy (ii). Lastly, the Applicants contend that the electoral body lacks the necessary credibility of its independence and impartiality

as exposed by the lack of inclusiveness, participation and transparency of its reform process (iii).

i. Composition of the electoral body

131. On the specific issue of its composition, the Applicants aver that the independence and impartiality of the electoral body is undermined due to the inappropriate presence of certain categories of its members, the inadequate appointment process of its members and the imbalance of its composition.

132. The Applicants make reference to Articles 5, 15, 16, and 17 of the impugned law on the recomposition of the IEC.

133. Article 5 of the impugned law, as amended by Order N° 2020-306 of 4 March 2020, provides that:

> The Independent Electoral Commission shall be composed of permanent and non-permanent members.
>
> The Independent Electoral Commission shall comprise a Central Commission and Local Commissions at the regional, departmental, communal and sub-prefectural levels.
>
> The members of the Central Commission shall be:
> - one personality proposed by the President of the Republic;
> - one personality proposed by the Minister in charge of Territorial Administration;
> - six personalities proposed by civil society, including one Lawyer appointed by the Bar, one personality proposed by the National Human Rights Council and four personalities proposed by Civil Society Organisations;
> - one Magistrate proposed by the Higher Judicial Council;
> - three personalities proposed by the party or political group in power;
> - four personalities proposed by opposition political parties or political groups.
>
> The members of the Central Commission shall be appointed by a Council of Ministers' decree for a period of six years.

Proposals shall be submitted to the Ministry of Territorial Administration who shall, in turn, draw up the list and send same to the Council of Ministers for appointment.

134. Article 15 of the impugned law, as amended by Order N° 2020-306 of 4 March 2020, provides that:

The members of the Regional Commission are:
- one personality proposed by the prefect of the Region;
- three personalities proposed by the party or political group in power;
- four personalities proposed by opposition political parties or political groups.

135. Article 16 of the impugned law, as amended by Order N° 2020-306 of 4 March 2020, stipulates that:

The members of the Departmental Commission shall be:
- one personality proposed by the Prefect of the Department;
- three personalities proposed by the party or political group in power;
- four personalities proposed by opposition political parties or political groups.

136. Article 17 of the impugned law, as amended by Order N° 2020-306 of 4 March 2020, provides that:

The IEC creates, on the proposal of the Departmental Commission, as many sub-prefectoral or communal Commissions as may be needed to carry out its duties.

The members of the sub-prefectoral or communal Commissions shall be:
- one personality proposed by the Sub-Prefect;
- three personalities proposed by the party or political group in power;
- four personalities proposed by the opposition political parties or political groups.

137. The Applicants contend that the electoral body lacks independence and impartiality because it is composed of political parties' representatives, who, in the Applicants' view, should not be part of an electoral body since they have a

stake in the outcome of the electoral process and this contradicts the requirement of an absence of bias.

138. The Applicants also find the presence of the members in the Central Electoral Commission proposed by the Higher Judicial Council and the National Human Rights Council unjustified since these bodies can be considered as being aligned with the ruling party. Lastly, the Applicants consider the presence of the members proposed by the President of the Respondent State and the Minister in charge of Territorial Administration unwarranted as these members, in their view, will undeniably execute the instructions and orders of the President of the Respondent State.

139. The Applicants further note that the new law foresees a change in the method of appointing members to the electoral body. In the former law, the electoral body was composed of various representatives from different appointing entities. The current law provides for different entities to "propose" members instead. However, in the Applicants' view nothing has fundamentally changed; a relationship of subordination remains or in other words a "dependency" between the proposing entity and the appointed member, which undermines the principle of "independence".

140. The Applicants also point out that even within this new system of "proposing" members instead of them "representing" certain entities, these proposals are still subject to the government's approval, which emphasises once more the inordinate influence from the government, undermining the principle of an independent electoral body.

141. The Applicants further contend that there is insufficient transparency about the principles, based on which the government decides which civil society groups and opposition parties are invited to make membership proposals. Similarly, they argue that there is an absence of competence criteria for appointing members to the electoral body. For them, selection and competence criteria of members are important guarantees of the independence and impartiality of the members of the electoral body which the Respondent State failed to provide.

142. The Applicants also note that the oath taken by members of the electoral body before assuming duty is not sufficient to ensure credibility in their independence and impartiality, in light of the overwhelming evidence of factors that undermine such independence and impartiality.

143. The Applicants lastly argue that there still is an over-representation of the ruling party and that therefore the necessary "balanced composition" which was ordered by the Court has not been achieved. They note that several of the entities which have the authority to propose members onto the electoral body are in fact aligned with the government or, in other words, the ruling party. Accordingly, to the complement of the ruling party's three members, should be added the members proposed by the President, the Minister in charge of Territorial Administration, the Higher Judicial Council and the National Human Rights Council. The government is therefore represented by seven (7) members against four (4) for the opposition.

144. For the Applicants, even the most recent amendment of the law through the Order N° 2020-306 of 4 March 2020 does not change much to this situation. They contend that the majority of the members in the electoral body still represent the government. Therefore, they submit that their arguments about an imbalanced composition and an unjustifiable politicization of the electoral body which undermine the independence of the electoral body, remain valid despite the change in the law.

145. The Applicants further note that whereas the Central Electoral Commission has a more diverse composition, the electoral bodies at the Local levels are almost entirely politicised.

146. The only non-overtly political actors are the members proposed by the prefects (Regional Commission) and by the sub-prefects (Departmental Commission). However, the Applicants maintain that these entities are part of the government, in the sense that they are the representatives of the President in the localities where they are called upon to discharge their duties, and therefore can be counted as representing the ruling party; thus creating a majority in the regional

and sub-regional electoral bodies in favour of the ruling party. The effects of which were noticed in the election of the Chairpersons of the Local electoral commissions, whereby 96% of the elected Chairpersons belonged to the category of personalities proposed by the ruling party (529 out of 549). This further undermines the notion of independence and impartiality of the electoral body, at least at the Local levels.

147. Whereas the balance before was four (4) members representing the government versus three (3) members representing opposition at the Local levels, the change of composition since the adoption of the Order N° 2020-306 of 4 March 2020, resulted in an equal representation of four (4) members of the government and four (4) members for the opposition. However, without new elections of the Bureau of the electoral body, the majority of Chairpersons of the Local Commissions remains a member who is aligned with the ruling party and who will cast the deciding vote in case of a split vote, as provided for under Article 35 of the law on the electoral body.

148. Accordingly, the Applicants note that although the opposition parties have a greater representation in the Local electoral bodies, the prerogative of the Chairperson to cast the deciding vote in case of a tie, demonstrates that a balanced composition is still not sufficiently established.

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149. In its response, the Respondent State argues that the new composition of the electoral body offers sufficient guarantees of independence and impartiality of its members. It also claims that the modifications of the legal framework regarding the appointment procedure have strengthened the independence and impartiality of the electoral body and that its composition is sufficiently balanced since it is not dominated by any political group, neither by those in power nor by those in the opposition.

150. The Respondent State claims that the inclusion of persons proposed by political parties or groups in an electoral body cannot in any way be considered a violation

of its international commitments. It maintains that none of the international instruments alleged to have been violated prohibits the inclusion of persons belonging to political parties or groups in the electoral body.

151. The Respondent State also disputes the claim from the Applicants that the proposing entities, the Higher Judicial Council and the National Human Rights Council should be considered as being aligned with the government. According to them, these bodies are independent. The guarantees of their independence are provided both by their legal framework and their composition. Therefore, they dismiss the claim from the Applicants that the members proposed by these entities do not offer sufficient guarantees of independence and impartiality for two main reasons. First, the personality proposed by the Higher Judicial Council is a judge and, in that capacity, they do not belong to any political grouping. Second, the personality proposed by the National Human Rights Council, whether chosen from within the Council or not, must come from civil society, which offers a further guarantee of their independence.

152. The Respondent State did not make any submissions concerning the claim of the Applicants about the unjustifiable presence in the electoral body of the personalities proposed by the President of the Respondent State and the Minister in charge of Territorial Administration.

153. Regarding the appointment procedure of the members of the electoral body, the Respondent State argues contrary to the position of the Applicants that there is a great difference between the notion of “being proposed” by an entity and “being a representative”. According to the Respondent State, under the system of representation, power is given to a person to act for and on behalf of another person. For the Respondent State, it is akin to the mechanism of a mandate. Acting for and on behalf of a mandator, the representative or mandatee has no authority of their own and is subjected to instructions and guidelines given by the person they represent.

154. In contrast, under the present system of nominations, the appointment of a particular member does not entail any form of subordination. Therefore, the

Respondent State claims that since members of the electoral body no longer represent the entities that propose them, the relationship that ties them to those entities ends at the moment of their appointment. Consequently, the Respondent State maintains that the changed method of appointing members of the electoral body established in the impugned law has greatly strengthened the independence of the electoral body.

155. With respect to the criteria on inviting opposition parties to propose members to sit in the electoral body, the Respondent State claims they have invited the different political parties which have parliamentary groups in the National Assembly. In selecting civil society organisations (CSOs) to propose electoral commission members, the Respondent State maintains that it was guided by the principles of inviting organisations based on their representativeness. Specifically, it clarified that umbrella or platform organisations were favoured which bring together the most active human rights organisations working on electoral issues.

156. Furthermore, the Respondent State notes that the impugned law does not contain any provision which compels the proposing entities to select persons from their “sphere of influence”. Thus, they claim that nothing prevents a member being proposed solely based on their competence rather than their political orientation.

157. The Respondent State also insists that it has not used its discretionary powers to reject any proposals by made the designated entities.

158. The Respondent State did not make any submissions concerning the insufficiency of an oath of the members of the electoral body to guarantee their independence and impartiality.

159. However, the Respondent State underlines that to further guarantee the independence of the electoral body, the members of the electoral body at the Central level are appointed for a fixed term of six years. During this term of office, any possible allegiance of the electoral body members to the entity which

proposed them cannot be of any consequence whatsoever, according to the Respondent State, since they stay appointed for a fixed term of office.

160. The Respondent State notes also that the Chairperson of the Central Electoral Commission is elected for a six-year term which is not renewable. It, therefore, contends that the Chairperson is under no obligation to manage the institution in such a way that would win him favours and assure the renewal of his term. This individual safeguard of independence of the Chairperson also results in a higher level of independence of the institution itself, according to the Respondent State.

161. Lastly, the Respondent State asserts that the legal reform it carried out to comply with the judgment of the Court in *APDH v Côte d'Ivoire* (merits) resulted in a balanced composition of the electoral body. The Respondent State notes that it removed the representatives of the President of the National Assembly and of the Minister of the Economy and Finance. It also added two representatives from CSOs which now constitutes the largest group within the electoral body with its six (6) members, which further guarantees its impartiality and independence. It also reduced the number of political parties' representatives from the ruling party from four (4) members to three (3) members while retaining four (4) members proposed by opposition parties. The result of these amendments is that the composition of the electoral body is not dominated by any political group, either by those in power or from the opposition.

162. The Respondent State did not make any submissions regarding the allegations by the Applicants that the composition of the electoral body remains imbalanced at the Local levels.

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163. When considering the issue of the composition of the electoral body and its relationship to independence and impartiality of electoral body, the Court takes note of the international human rights instruments and relevant jurisprudence governing this issue. Specifically, the Court takes into consideration Article 17 of the ACDEG, Article 3 of the ECOWAS Democracy Protocol and the Court's

judgements in *APDH v Côte d'Ivoire* (merits) and in *APDH v Côte d'Ivoire* (interpretation).

164. Article 17 of the ACDEG stipulates that: "State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa. To this end, State Parties shall: 1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections. […]"

165. Article 3 of the ECOWAS Democracy Protocol provides that: "The bodies responsible for organising the elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organised to determine the nature and the structure of the bodies."

166. In its judgment in *APDH v Côte d'Ivoire* (merits) the Court held "that an electoral body is independent where it has administrative and financial autonomy; and offers sufficient guarantees of its members' independence and impartiality."[11]

167. The Court also held "that institutional independence in itself is not sufficient to guarantee the transparent, free and fair elections advocated in the African Charter on Democracy and the ECOWAS Democracy Protocol. The electoral body in place should, in addition, be constituted according to law in a way that guarantees its independence and impartiality and should be perceived as such."[12]

168. Furthermore, the Court found that "for a body to be able to reassure the public about its ability to organise transparent, free and fair election, its composition must be balanced."[13]

169. The Court also held in its interpretation judgment that the Respondent State sought the Court's opinion on how to implement the order of the Court to make

[11] *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 118.
[12] *Ibid,* § 123.
[13] *Ibid,* § 125.

the electoral law compliant with the aforementioned human rights instruments, which, "in the Court's view, is the responsibility of the State of Côte d'Ivoire".[14]

170. The Court further notes that in Africa there is a great diversity in terms of the structure and composition of independent and impartial electoral bodies.[15] Generally, these characteristics depend on the specificity of each country taking into account their respective legal, administrative and political history.

171. The Court accordingly finds that it is not incumbent on it to impose a one-size-fits-all solution on the structure and composition of the electoral bodies across the continent. However, the Court must still consider whether the new law adopted by the Respondent State is no longer in violation of the human rights instruments mentioned in paragraph 12 of this judgment. Therefore, the Court will first consider the different criteria that may affect the electoral body's independence and impartiality. Then, in the subsequent sections it will consider the electoral body's institutional independence and its credibility as revealed through its reform process.

a. The members of the electoral body

172. With regard to the composition of the Respondent State's electoral body the Court holds, contrary to the Applicants' claim, that having political parties represented in an electoral body does not necessarily exclude the possibility for it to offer sufficient guarantees of its independence and impartiality. However, as the Court noted in its judgement in *APDH v Côte d'Ivoire* (merits), "for such a body to be able to reassure the public about its ability to organise transparent, free and fair

[14] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (interpretation) (2017) 2 AfCLR 14, § 16.
[15] See, for example, *Electoral Commissions in West Africa - a Comparative Study* (ECOWAS Electoral Assistance Unit and Friedrich-Ebert-Stiftung, 2011), *Election Management Bodies in Southern Africa - Comparative study of the electoral commissions' contribution to electoral processes* (Open Society Initiative for Southern Africa and Electoral Commissions Forum – SADC Countries, 2016), *Electoral Management Design* (International IDEA, 2014).

elections, its composition must be balanced".[16] The issue of a balanced composition of the electoral body is discussed further below.

173. The Court also considers that the allegations relating to the allegiance of the National Human Rights Council and the Higher Judicial Council with the government should be substantiated and demonstrated to the Court and not be limited to mere affirmations without objective evidence. It therefore dismisses them.

174. Furthermore, despite that the Respondent State did not offer any justification for the presence of the personality proposed by the President of the Respondent State and the Minister in charge of Territorial Administration, the Court cannot accept the unsubstantiated allegation that these personalities will undeniably carry out the instructions and orders of the proposing entity.

b. Appointment procedure of the members of the electoral body

175. Regarding the procedure for appointing members to the electoral body, the Court does not see how *a priori* it undermines the independence and impartiality of the electoral body. It is certainly reasonable to argue that relationships of dependency between an entity and its representative in an electoral body may reduce the overall independence of the electoral body. However, it is exactly in this vein that the Respondent State "strengthened" the independence and impartiality of the electoral body, as provided for in Article 17 of the ACDEG, through the adoption of the new law by further reducing the direct link between the proposing entity and the appointed member through a new method of appointment.

176. On the criteria for determining which opposition parties and CSOs to invite to propose members for the electoral body, the Court notes that they are not guaranteed by any national law. The Court further observes that it is the

[16] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 125.

Respondent State that decides which opposition parties and umbrella or platform organisations of civil society to invite to submit nominations for membership of the electoral body.

177. The Court considers that, borrowing from the process of elections for national CSO representatives for membership of the Economic Social and Cultural Council, an organ of the African Union, the best practice is where the nomination process for representatives of CSOs and opposition parties in the electoral body is driven by those entities, based on pre-determined criteria, and with the authority to organise themselves, consult, hold elections as necessary, and submit the required nominees. The Court holds that this practice would be in line with the international obligations of the Respondent State to ensure public trust and transparency in the management of public affairs and citizens' effective participation in democratic processes, as required by Article 3(7), Article 3(8) and Article 13 of the ACDEG, as well as its obligation to ensure that the electoral body has the confidence of all the political actors as prescribed by Article 3 of the ECOWAS Democracy Protocol.

178. The Court further notes that the Respondent State does not refute that the government has discretionary power to potentially reject members proposed by the respective proposing entities, as was asserted by the Applicants. If a rejection would be based on criteria that reveal an unjustifiable bias by the government, then such a rejection would in fact undermine the independence of the electoral body. However, the Court notes the Respondent States' observation that it had not rejected any proposed member.

179. Regarding the Applicants' contention that the oath taken by the members of the electoral body is not sufficient to ensure credibility in the independence and impartiality of the members of the electoral body, the Court finds that the Applicants have failed to sufficiently support their argument about the inadequacy of this measure, which is otherwise considered a pertinent guarantee of independence and impartiality.

180. Furthermore, the Court is convinced that the fixed term limits for the members of the electoral commission at the Central level and the non-renewability of the term of the Chairperson are additional guarantees for ensuring the independence of the members of the electoral body, mentioned by the Respondent State.

c. Balance within the electoral body

181. Concerning the question of whether the composition of the electoral body is sufficiently balanced, the Court recalls the Order N° 2020-306 of 4 March 2020 through which an additional seat has been granted to opposition parties. This amendment effectively reduces the influence of the ruling party in the electoral body at both the Central level and at the Local levels.

182. The Court also notes that the Respondent State reduced the number of representatives in the electoral body associated with the ruling party compared with the previous law. Specifically, the Court notes that the representative of the President of the National Assembly and the representative of the Minister of the Economy and Finance have been removed from the composition of the Central Electoral Commission.

183. The Court also observes that the Respondent State has given a greater representation to members in the Central Electoral Commission originating from CSOs.

184. Consequently, the Court finds that the composition of the Central Electoral Commission is no longer overly dominated by any political group, nor is the electoral body dominated by supposedly non-political actors such as those emanating from civil society or the judiciary. Therefore, the Court finds that the composition of the electoral body at the Central level does not reveal a manifest imbalance.

185. Concerning the balance of the composition of the electoral body at the Local levels, the Court observes that the Respondent State did not make submissions

to explain the politicized nature of its composition. However, the Court notes the concern of the Applicants that the Electoral Commission at the Local levels lacks a more diverse composition compared to the Central Electoral Commission.

186. The Court also notes that following the modification of Law N° 2019 – 708 of 05 August 2019 by Order N° 2020-306 of 4 March 2020, whereby opposition parties were given an extra seat in the membership of the electoral body at the local levels, the membership is now balanced between four (4) personalities proposed by the opposition parties and four (4) proposed by the Government.

187. However, the Court takes notice of the concern expressed by the Applicants regarding the internal decision-making procedures within the electoral body at the Local levels whereby the Chairperson may cast the swing vote in case of a tie. They assert that the Chairpersons of the electoral bodies at the Local levels as they are currently constituted, predominantly originate from the ruling party at 96% to 4% from opposition parties. This manifest imbalance originates from the Bureau elections based on the previous composition, before Order N° 2020-306 of 4 March 2020 was adopted, when the electoral body at the Local levels was still composed in such a way that the majority of its members were proposed by the Government.

188. The Court finds it reasonable to organise new Bureau elections based on the new composition of the electoral body at the Local levels.

ii. Institutional independence of the electoral body

189. The Applicants contend that the electoral body is not institutionally independent.

190. The Applicants refer to the Court's judgment of 18 November 2016 in *APDH v Côte d'Ivoire* (merits) where it held that an electoral body is institutionally independent when it has administrative and financial autonomy.[17]

[17] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 118.

191. The Applicants also refer to the Courts' consideration in that judgment where it established that "[r]egarding the institutional independence of this body, Article 1(2) of the impugned law provides that: '... the IEC is an independent administrative authority endowed with legal personality and financial autonomy'".[18]

192. In referring to the Court's finding that "[t]he above provision shows that the legal framework governing the Ivorian electoral body leaves room for assumption that the latter is institutionally independent,"[19] the Applicants argue, however, that this conclusion does not correspond with reality and the electoral body in fact lacks independence and impartiality in terms of its administrative and financial autonomy

193. For the Applicants, autonomy refers to the ability of a body to govern itself and make decisions for itself.

194. To support the claim that the electoral body lacks administrative autonomy the Applicants refer to responsibilities of the electoral body and points out that for many of its duties, it only has the competence to make proposals, which are then to be decided by the government. This limitation in power by only having a right to make proposals underscores, for the Applicants, the lack of sufficient administrative autonomy.

195. The Applicants also claim that there is a lack of sufficient financial autonomy. According to them, the financial regulation of the electoral body is left entirely at the whims of the government which decides when and how it makes the financial resources available to the electoral body.

196. In referring to Article 40 of the impugned law, the Applicants point out that the budget is drafted by the Bureau which transmits it to the Ministry in charge of the Economy and Finance for inclusion by the Council of Ministers in the draft finance bill for of the financial year in question.

[18] *Ibid,* § 121.
[19] *Ibid,* § 122.

197. This means that the electoral body only has the power to make proposals concerning its administrative authority and its financial resources, from which the Applicants conclude that the Respondent State failed to fulfil its obligation to create an independent and impartial electoral body.

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198. The Respondent State notes that the Court already ruled on the institutional independence of the electoral body and found that the requirement of institutional independence is met. It notes that the Court based its finding of the institutional independence on Article 1(2) of the impugned law.[20] According to the Respondent State this article has not changed, therefore, it argues that to avoid legal uncertainty the Court should not alter its earlier position on this.

199. Regarding the administrative autonomy of the electoral body, the Respondent State refers to its legal system to explain how its parliament is mandated to vote laws whereas the executive branch is mandated to develop regulations implementing these laws. Therefore, the Respondent State concludes that the responsibility allocated to the government to implement the law on the electoral body is entirely constitutional and does not result in a dependence of the electoral body in any way.

200. Concerning the financial autonomy of the electoral body, the Respondent State notes that the budget of the electoral body is prepared by its Bureau which transmits the draft budget to the supervisory ministry for inclusion in the financial bill of the financial year in question which is ultimately adopted by Parliament. The Respondent State therefore argues the fact that the Bureau of the electoral body prepares its own budget underscores the financial autonomy of the electoral commission. The Respondent State further contends that the Applicants failed to provide evidence in the law, in relation to the allocation of financial resources,

[20] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 121.

that would support their claim that the electoral management body lacks independence. Therefore, the Applicants' argument should be dismissed.

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201. In its judgment in *APDH v Côte d'Ivoire* (merits) of 18 November 2016, the Court held "that an electoral body is independent where it has administrative and financial autonomy; and offers sufficient guarantees of its members' independence and impartiality."[21]

202. In this decision the Court was satisfied to adopt the presumption that there is sufficient institutional independence based on Article 1(2) of the impugned law, considering that the institutional independence was not specifically challenged by the Applicants in the matter of *APDH v Côte d'Ivoire* (merits).[22] In this Application, however, the Applicants do challenge the institutional independence of the Respondent State's electoral body, even though, the abovementioned article has not changed in the latest legal reform of the electoral body. Accordingly, the Court can proceed to assess the allegations made by the Applicants without necessarily creating legal uncertainty, because no substantive determinations on the electoral body's institutional independence were made.

203. Regarding the administrative autonomy of electoral bodies, the Court notes that there are various ways of allocating responsibilities between an electoral body and other state institutions in terms of decision-making on electoral matters. The Court holds that the requirement of administrative autonomy of electoral bodies is not necessarily undermined by a regulation that stipulates that they can make proposals to the executive branch on the basis of which the executive branch then makes decisions.

204. The functions of electoral bodies, including their scope of decision-making, vary across the continent. Accordingly, there are various degrees of the extent of

[21] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 118.
[22] *Ibid,* § 122.

electoral body's administrative autonomy. The Court therefore cannot conclude that there are any absolute criteria regarding the appropriate amount of administrative autonomy. Instead, this assessment will depend on the particular circumstances of each case. In the instant case the Court finds that the Applicants have not provided sufficient evidence to justify that the administrative autonomy of the Respondent State's electoral body is manifestly restricted which would prevent it from organising transparent, free and fair elections.

205. Similarly, the Court notes that the requirement of financial autonomy is not an absolute requirement. Considering the discretionary power exercised by Parliament in adopting the bill governing the electoral body's finances and the involvement of the electoral body through its Bureau in preparing its own budget, the Court finds that its financial autonomy is sufficiently assured.

206. Therefore, the Court dismisses the argument of the Applicants concerning the alleged lack of institutional independence of the Respondent State's electoral body.

iii. Credibility of the electoral body's independence and impartiality

207. The Applicants also raise concerns regarding the process that led to the adoption of the new law on the recomposition of the electoral body and which undermine the credibility of the electoral body's independence and impartiality beyond the deficiencies already raised above.

208. The Applicants claim that the legislative process that led to the reform of the electoral body was characterised by a lack of transparency, inclusiveness and adequate opportunities to participate in the amendment process.

209. The Applicants contend that the failure of the government to make the terms of reference, including a discussion schedule, details about the decision-making process and a secretariat to ensure the transparency of the discussions, resulted in the decision by opposition parties to withdraw from the discussions which undermined the inclusiveness of the reform process. According to the Applicants,

the absence of such terms of reference prevented the opposition parties to adequately prepare for the discussions and prevented them from knowing the conclusions of each round of discussion.

210. The Applicants also challenge that the criteria for selecting which CSOs are allowed to participate in the legislative reform were not clearly defined. They put forward that the participating CSOs lacked proven competence and independence.

211. The Applicants note that all the amendments proposed by the parliamentary opposition were simply rejected and that this could be considered as an abuse of majority power. Furthermore, the Applicants also observe that the new impugned law includes elements that were not subjected to previous political consultations.

212. Furthermore, the Applicants claim that the adopted law was never made available to the various parliamentary groups to enable them to lodge an appeal with the Constitutional Council. They contend that it is for that reason that the sixty-six (66) opposition members that brought the matter before the Constitutional Court only presented the amended draft. This was subsequently the reason the Constitutional Council found in its decision of 5 August 2019 that their Application is inadmissible, since it cannot decide on draft laws.

213. The Applicants also challenge the subsequent hasty promulgation of the law and claim that it undermined the democratic nature of the legislative reform process, especially because it prevented the opposition parties from challenging the constitutionality of the law. The Applicants submit that the new law was promulgated the same day the members of parliament submitted the petition to the Constitutional Council to challenge the law.

214. The Applicants similarly contend that the adoption by government of a new law on 4 March 2020 to alter the composition of the Respondent State's electoral body by an Order of the President also reveals its lacking democratic nature. Specifically, they object to the President's use of his powers to alter a law merely

a few months after it was reformed by representatives of the people on the basis of a so called “inclusive dialogue”.

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215. The Respondent State submits, contrary to the written and oral submissions by the Applicants, that the government ensured the legislative reform process was based on inclusive and open political dialogue.

216. The Respondent State referred to the judgment of the Court in *APDH v Côte d’Ivoire* (interpretation) where the Court held that it was the government’s responsibility to strike the best form of balance. In its search for the best form of balance, the Respondent State opted for a solution based on consensus. In view of its concern to ensure the appropriate conditions to formulate a law that would guarantee the establishment of an independent and impartial electoral body, the President of the Respondent State issued instructions to the Government to initiate consultations with political parties as well as with CSOs.

217. The Respondent State note that on the basis of various rounds of discussions, a list of aspirations of political parties and those of the civil society were drawn up. At the end of the discussions, a final report was written and signed by the parties involved. In light of the proposals and reform proposal documents forwarded by the parties involved, the bill amending the law relating to the recomposition of the electoral body was tabled before and adopted by Parliament.

218. The Respondent State further notes that the lack of participation of some political parties was not caused by the Government’s lack of efforts to invite them to the process. Concerning the contention about the lacking terms of reference, the Respond State maintains that the objective of the discussions was clearly specified in the invitations to the political dialogue.

219. The Respondent State also reminds the Court that it was under no obligation to follow such a resolutely participatory approach by organising the political

dialogue. The Respondent State also did not consider it opportune to lock the political dialogue into strict terms of reference imposed on the other stakeholders.

220. Regarding the adoption of the Order by the President in March 2020 amending the law of 5th of August 2019, the Respondent State notes that the change in the composition of the electoral body was not to establish a balance which did not exist. In the contrary, the alteration to the law was simply adopted in pursuance of its international human rights obligations to improve the standards of the electoral body even further.

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221. Article 3 of the ECOWAS Democracy Protocol provides that the "bodies responsible for organising the elections shall be independent or neutral and *shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organised to determine the nature and the structure of the bodies.* [emphasis added]".

222. In its jurisprudence the Court has held "that institutional independence in itself is not sufficient to guarantee the transparent, free and fair elections advocated in the African Charter on Democracy and the ECOWAS Democracy Protocol. The electoral body in place should, in addition, be constituted according to law in a way that guarantees its independence and impartiality and should be perceived as such."[23]

223. In line with Article 3 of the ECOWAS Democracy Protocol, the Court's jurisprudence makes it clear that beyond the need for *de jure* guarantees of independence and impartiality, the Court also requires *de facto* respect for these principles supported by the perception of the public.[24]

224. The Court notes that such a "perception" can be influenced by procedural guarantees such as inclusion, participation and transparency during the different

[23] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 123.
[24] *Ibid,* § 125.

stages constituting an electoral body, including during the development of its legal framework, the appointment of its members and personnel, as well as its functioning throughout the electoral process.

225. In the instant case, the Court takes notice of the Applicants' concerns about the reform process, notably the disputed levels of transparency about the organisation of the reform process and the hasty promulgation of the law which allegedly prevented the opposition parties from challenging the constitutionality of the law.

226. However, the Court also notes the attempt by the Respondent State to ensure the process reforming the composition of the electoral body was inclusive and consensus based. The Court further observes that the impugned law was adopted by parliament which further underlines the democratic credentials of the reform process of the electoral body. And even if the law was later amended by an Order from the Government, instead of Parliament, the Court notes that the objective of that reform was to grant an additional seat to opposition parties, which thereby further strengthened the independence and impartiality of the electoral body.

227. Therefore, the Court finds, pursuant to Article 3 of the ECOWAS Democracy Protocol, that the Applicants have failed to demonstrate that the national consultations on which the reform process was based were of such inappropriate nature to conclude that the resulting electoral body manifestly lacks confidence from relevant political stakeholders in respect of its reform process.

228. In sum, the Court finds that the Applicants have failed to demonstrate that the Respondent State established an electoral body that is composed of members who are not independent and impartial, manifestly imbalanced in favour of the ruling party, overly institutionally dependent due to inadequate degrees of administrative or financial autonomy, and manifestly lacking confidence from political stakeholders based on its reform process.

229. However, considering the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party, following Bureau elections based on the previous law when the electoral body at the Local levels was still imbalanced in favour of the Government, the Court finds that the Respondent State has not fully complied with Article 17 of the ACDEG and 3 of the ECOWAS Democracy Protocol, and has therefore violated these provisions.

230. In addition, the Court has considered the absence of a mechanism to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs, are driven by those entities. Accordingly, the Court finds that the Respondent State has not fully complied with its obligations to ensure public trust and transparency in the management of public affairs and effective citizens' participation in democratic processes as prescribed by Articles 3(7), 3(8) and 13 of the ACDEG, nor with its obligation to ensure that the electoral body has the confidence of all the political actors, as prescribed by Article 3 of the ECOWAS Democracy Protocol. The Court therefore finds that the Respondent State has violated these provisions.

C. Alleged violation of the right to participate freely in government and of the right to equal protection of the law

231. The Applicants contend that independent candidates are not represented in the composition of the electoral body, whereas candidates from political parties are represented in the Central Electoral Commission and in the electoral bodies at the Local levels. Therefore, the Applicants claim that the impugned law violates the rights of independent candidates to freely participate in the government of their country as well as their right to have equal access to the public services of their country.

232. Furthermore, the Applicants assert that if the President of the Respondent State would stand for elections or put a candidate forward from his party, the fact that he is represented in the electoral body together with other representatives of his government and the members of the ruling party, whereas independent

candidates are not represented, would result in an unfair advantage for the candidate of the ruling party vis-à-vis other candidates and particularly independent candidates, which constitutes a discrimination that cannot be reasonably and objectively justified. Therefore, the Applicants maintain that the Respondent State has violated its obligation to guarantee the right to equal protection of the law.

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233. The Respondent State disputes the claims of the Applicants and argues that in no way can the impugned law be read as being devoted to the representation of candidates from political parties, since this connection of representation has been replaced by the mechanism of proposal. Therefore, the impugned law does not in any way violate the right of citizens from the Respondent State to freely participate in their country, either directly or through freely chosen representatives.

234. The Respondent State also contends that the impugned law cannot occasion a violation of the right to equal access to the public services of the country, since its electoral body does not interfere in matters relating to the access to the public service of the country.

235. The Respondent State also notes the challenges of identifying independent candidates to participate as an entity to propose members to the electoral body, considering that they are by definition not affiliated to any political organisation. Furthermore, the Respondent State observes that, when constituting the electoral body more than a year before the elections, independent candidates have not yet submitted their nomination papers which could be used to identify them as independent candidates. The Respondent State also asserts that independent candidates may still decide to run under the banner of a political party and, conversely, people affiliated with political parties may decide to break with party discipline and run as independent candidates.

236. Finally, the Respondent State maintains that the new composition of the electoral body does not allow for any imbalanced representation in favour of the government and consequently, cannot give rise to an unfair disadvantage or to any breach of the citizen's right to equal protection of the law.

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237. In considering the question of independent candidates, the Court needs to address two issues. Firstly, the Court needs to determine whether the non-representation of independent candidates in the electoral body is a violation of the right to freely participate in government. Secondly, the Court needs to establish whether there is an unfair advantage for electoral candidates originating from the ruling party which would violate the right to equal protection of the law.

238. Article 13(1) of the Charter provides that "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."

239. Article 13(2) of the Charter stipulates that "Every citizen shall have the right of equal access to the public service of his country."

240. Article 10(3) of the ACDEG specifies that "State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society."

241. Article 3(2) of the Charter stipulates that "Every individual shall be entitled to equal protection of the law."

242. Article 26 of the ICCPR provides that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

243. The first issue for determination concerns whether the non-inclusion of independent candidates' representative in the electoral bodies results in a violation of Article 13(1) and (2) of the Charter.

244. At the outset, the Court observes that the Applicants have not demonstrated how the non-inclusion of independent candidates in the list of entities that may propose members to the electoral body as established in the impugned law has affected their right to freely participate in government or have equal access to the public service of the country.

245. The Court further notes the difficulty in identifying and selecting representatives of independent candidates before the final lists of candidates for elections are drawn up.

246. For these reasons, the Court finds no violation with regard to right to freely participate in government nor with regard to the question of equal access to the public service of the country, as provided under Article 13(1) and (2) of the Charter.

247. Concerning the second issue related to the alleged unfair advantage for electoral candidates originating from the ruling party, the Court is of the view that the argument of the Applicants on the discrimination towards independent candidates is based on the assumption that there is an imbalance in the composition of the electoral body. The alleged discrimination against the candidates that do not originate from the ruling party is then supposedly the result of the imbalanced composition. However, the Court notes that it already established that the Applicants have failed to demonstrate the imbalanced composition of the electoral body. The Court also notes that the Applicants did not clarify what kind of advantage candidates from the ruling party would benefit from which is allegedly denied to other candidates, particularly independent candidates. Accordingly, the Court does not find that the Applicants have proven any unfair advantage towards some candidates. Therefore, the Court does not find that the right to equal protection of the law has been violated in relation to

independent candidates or any other candidates, as foreseen in Article 10(3) of the ACDEG, Article 3(2) of the Charter and Article 26 of the ICCPR.

D. Alleged violation of the obligation to execute judgments

248. The Applicants assert that the Respondent State did not execute the judgment rendered by this Court on 18 November 2016 in the matter of *APDH v Côte d'Ivoire* (merits), due to its failure to establish an independent and impartial electoral body which is in compliance with the international legal instruments to which the Respondent State is a party. The Applicants therefore submit that the Respondent State violated Article 30 of the Protocol.

249. They substantiate this claim based on their above mentioned submissions relating to the entities that nominate electoral body members, the method used to nominate those members which remain subject to the approval of the Council of Ministers and the fact that the electoral body only has the power to make proposals for the execution of its duties.

250. The Applicants also claim that the Respondent State failed to fulfil its obligation under Article 30 of the Protocol because it did not carry out the reform ordered by the Court within the timeline set by the Court, that is, one year from the date the judgment was rendered.

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251. The Respondent State disputes the claim of the Applicants and avers that it honoured its international commitments by adopting Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC. It argues that the impugned reform satisfies the requirements of the said judgment, given that the reform law was enacted in strict compliance with the international instruments which the Court ordered the Respondent State to comply with.

252. The Respondent State also notes that to execute the Court's judgement, it first requested an interpretation of the judgment which was only delivered on 28

September 2017. The Respondent State then opted for a consensus-based solution to change the impugned law of the Court's judgment of 18 November 2016. It claims that the organisation of such an inclusive political dialogue with different political parties and CSOs to establish an electoral body that meets relevant international standards inevitably took time.

253. The Respondent State therefore argues that there is ample justification for its inability to submit a report on the execution of the judgment within one year of its notification of the decision and that such inability cannot constitute any violation whatsoever of its international commitments.

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254. Article 30 of the Protocol stipulates that: "The States parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution."

255. The Court recalls that in its judgment in *APDH v Côte d'Ivoire* (merits), it ordered the Respondent State to:

> to amend Law No 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the aforementioned instruments to which it is a Party; and
>
> to submit to it a report on the implementation of this decision within a reasonable time which, in any case, should not exceed one year from the date of publication of this Judgment;[25]

256. The Court notes the various efforts undertaken by the Respondent State to comply with its judgement of 18 November 2016 and guarantee its execution, including through its request on 4 March 2017 for an interpretation of the Court's judgement and its search for a consensus-based solution to reform the electoral

[25] *Actions pour la Protection des Droits de l'Homme (APDH) v. Côte d'Ivoire* (merits) (2016) 1 AfCLR 668, § 153.

body through the adoption of Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC.

257. The Court also observes that it already found that the Applicants have not demonstrated that the impugned law establishes an electoral body that is composed of members who are not independent and impartial. The Court has also not found that the impugned law provides for a composition of the electoral body at the Central level or at the Local levels that is manifestly imbalanced in favour of the ruling party. Neither did it find the electoral body overly institutionally dependent due to inadequate degrees of administrative or financial autonomy, or manifestly lacking confidence from political stakeholders in respect of its reform process.

258. However, the Court noted the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party, following the Bureau elections on the basis of the previous law when the electoral body at the Local levels was still imbalanced in favour of the Government. Accordingly, the Court found that the Respondent State has not fully complied with Article 17 ACDEG and Article 3 ECOWAS Democracy Protocol, and as a result, it determined that the Respondent State violated these provisions.

259. In addition, the Court noted the absence of a mechanism to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs, are driven by those entities. For that reason, the Court also found that the Respondent State has not fully complied with its obligations to ensure public trust and transparency in the management of public affairs as well as effective citizens' participation in democratic processes, as prescribed under Articles 3(7), 3(8) and 13 of the ACDEG; nor with its obligation to ensure that the electoral body has the confidence of all the political actors, as prescribed by Article 3 of the ECOWAS Democracy Protocol. Accordingly, the Court found a violation of these provisions.

260. However, the Court notes that the remaining manifest imbalance of the Chairpersons of the Local electoral commissions relates to the implementation of the law and not to the content of the law.

261. The Court further notes that the absence of an appropriate mechanism to appoint members of the electoral body from civil society and political parties, particularly opposition parties, does not necessarily require an amendment of the impugned law. Such a mechanism could also be established through other measures.

262. The Court recalls its earlier jurisprudence in the matter of *APDH v Côte d'Ivoire* (interpretation), where it held that it is not the Court's responsibility to decide how to make the law governing the electoral body compliant with the relevant human rights instruments, that is the responsibility of the Respondent State. Instead, the Court can only interpret the relevant human rights instruments and consider whether the law on the electoral body is in violation with those instruments or not. In the instant case, the Court finds that the Applicants have not sufficiently demonstrated that the impugned law on the electoral body fails to meet the standards provided by the relevant human rights instruments to which the Respondent State is a Party.

263. Regarding the obligation to execute the judgment within the stipulated time, the Court notes that the procedure to interpret the Court's earlier judgment may help explain the initial delay in executing the said judgment. And while the Respondent State could have launched the consensus based legislative process to reform the law governing the electoral body earlier, the Court finds the Respondent State's justification of the delay acceptable.

264. Accordingly, the Court holds that the Respondent State has not violated its obligation to execute the judgment of the Court.

VIII. REPARATIONS

265. The Applicants pray the Court to find a violation of the abovementioned human rights instruments, to order the Respondent State to amend, before any election, Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC and to make it compliant with the aforementioned instruments to which it is a party as well as to order a time limit within which it is to execute this order at the expiration of which it will submit a report for the observation of the Court.

266. The Respondent State avers that the Applicants' prayers should be dismissed.

267. Article 27(1) of the Protocol stipulates that: "[i]f the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

268. The Court found that with regard to the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party, following Bureau elections based on the previous law when the electoral body at the Local levels was still imbalanced in favour of the Government, the Respondent State did not fully comply with Article 17 of the ACDEG and Article 3 of the ECOWAS Democracy Protocol, and therefore, the Respondent State violated these provisions.

269. For this reason, the Court orders the Respondent State to take the necessary measures before any election to ensure that new Bureau elections, based on the new composition of the electoral body, are organised at the Local levels.

270. Furthermore, the Court found that the Respondent State has not fully complied with its obligations to ensure public trust and transparency in the management of public affairs as well as effective citizens' participation in democratic processes as prescribed under Article 3(7), Article 3(8) and Article 13 of the ACDEG; nor with its obligation to ensure that the electoral body has the confidence of all the political actors as prescribed by Article 3 of the ECOWAS Protocol on Democracy. Accordingly, the Court found a violation of these provisions.

271. The Court therefore orders the Respondent State to take the necessary measures before any election to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs are driven by those entities, based on pre-determined criteria, with authority to organise themselves, consult, hold elections as necessary, and submit the required nominees.

IX. COSTS

272. Neither party made submissions on costs.

273. The Court notes that Rule 30 of the Rules of Court provides that "unless otherwise decided by the Court, each Party shall bear its own costs".

274. The Court therefore decides that each Party shall bear its own costs.

X. OPERATIVE PART

275. For these reasons,

The COURT,

Unanimously:

On Jurisdiction:

i. *Dismisses* the objection on jurisdiction of the Court; and

ii. *Declares* that it has jurisdiction.

On Admissibility:

iii. *Dismisses* the objection to the admissibility of the Application*;* and

iv. *Declares* the Application admissible.

On Merits:

v. *Finds* that the Respondent State has not violated its obligation to protect citizens' right to participate freely in the government of their country as provided under Article 13(1) and (2) of the African Charter on Human and Peoples' Rights;

vi. *Finds* that the Respondent State has not violated its obligation to protect the right to equal protection of the law, as provided under Article 10(3) of the African Charter on Democracy, Elections and Governance, Article 3(2) of the African Charter on Human and Peoples' Rights and Article 26 of the International Covenant on Civil and Political Rights;

vii. *Finds* that the Respondent State has not violated its commitment to comply with the judgment of the Court in a case to which it was a party within the time stipulated by the Court and to guarantee its execution in accordance with Article 30 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;

viii. *Finds* that the Respondent State has not fully complied with its obligation to create an independent and impartial electoral body as provided for under Article 17 of the African Charter on Democracy, Elections and Governance and Article 3 of the ECOWAS Protocol on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. The Court therefore finds a violation of those provisions with regard to the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party, following Bureau elections based on the previous law when the electoral body at the Local levels was still imbalanced in favour of the Government; and

ix. *Finds* that the Respondent State has not fully complied with its obligations to ensure public trust and transparency in the management of public affairs as well as effective citizens' participation in democratic processes as prescribed under Article 3(7), Article 3(8) and Article 13 of the African Charter on

Democracy, Elections and Governance; nor with its obligation to ensure that the electoral body has the confidence of all the political actors as prescribed by Article 3 of the ECOWAS Protocol on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. The Court therefore finds a violation of those provisions with respect to the absence of a mechanism to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs, are driven by those entities.

On Reparations:

x. *Orders* the Respondent State to take the necessary measures before any election to ensure that new Bureau elections, based on the new composition of the electoral body, are organised at the Local levels;

xi. *Orders* the Respondent State to take the necessary measures before any election to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs are driven by those entities, based on pre-determined criteria, with the authority to organise themselves, consult, hold elections as necessary, and submit the required nominees; and

xii. *Orders* the Respondent State to report to the Court on the measures taken in respect of paragraphs x and xi within three (3) months from the date of notification of this Judgment, and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On Costs:

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

Signed:

Ben KIOKO, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

M-Thérèse MUKAMULISA, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

and Robert ENO, Registrar.

Done at Arusha, this fifteenth Day of July in the year Two Thousand and Twenty, in English and French, the French text being authoritative.