In the case

1- IBRAHIMA CHERIF BAH
2- ABDOULAYE BAH
3- MAMADOU CELLOU BALDE
4- OUSMANE GAOUAL DIALLO
5- ETIENNE SOROPOGUI against the STATE OF GUINEA.

Application No.: ECW/CCJ/APP/10/21 *Judgment No. ECW/CCJ/JUD10/25*

JUDGMENT

ABUJA

March, 14th 2025

CASE NO: ECW/CCJ/APP/10/21

JUDGMENT No. ECW/CCJ/JUD/10/25

IBRAHIMA CHERIF BAH AND 4 OTHER APPLICANTS

C/

STATE OF GUINEA **DEFENDANT**

BEFORE THEIR LORDSHIPS:

Hon. Judge Ricardo Claúdio Monteiro **GONÇALVES** - Presiding

Hon. Judge Dupe **ATOKI** - Member

Hon. Judge Gberi-bè **OUATTARA** - Judge Rapporteur/Member

ASSISTED BY: Bar. Aboubakar Djibo **DIAKITE** - Registrar

I. REPRESENTATION OF THE PARTIES:

Maîtres Patrick KLUGMAN and Ivan TEREL, lawyers at the Paris Bar;
Mohamed TRAORE, Pépé Antoine LAMA, Salifou BEAVOGUI, Modibo CAMARA, Thierno Souleymane BARRY, Souaré DIOP, Amadou Timbi DIALLO, Alpha Yaya DRAME and Alseny Aïssata DIALLO, all Lawyers at the Guinean Bar

Counsel for the applicants

The State Judicial Agent of Guinea
Assisted by Maître Joachim GBILIMOU,
Attorney-at-law at the Guinean Bar.

Counsel for the defendant

II. *JUDGMENT OF COURT*

This is the judgment delivered by the Court in a virtual public hearing in accordance with Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Hearings, 2020.

III. *DESIGNATION OF THE PARTIES*

1. The applicants are:

1- **Ibrahima Chérif BAH**: (73 years old) born on 21 January 1948 in Boffa, former Governor of the Central Bank of the Republic of Guinea, Vice-President of the Union des Forces Démocratiques de Guinée (UFDG) in charge of external relations and communication, of Guinean nationality domiciled in Lambanyi commune of Ratoma, Conakry;

2- **Abdoulaye BAH**: (49 years old) born on 22 August 1972 in Kindia, member of the Executive Committee of the political party known and called UFDG, of Guinean nationality, residing in Wondy in the urban commune of Kindia;

3- **Mamadou Cellou BALDE**: (43 years old) born on 7 March 1978 in Labé, former one-term MP from Labe, member of the UFDG Executive Committee overseeing the affairs of National Federations of the UFDG, of Guinean nationality, residing in Labé;

4- Ousmane Gaoual DIALLO: (48 years old) born on 13 August 1973 in Labé, former MP, coordinator of the UFDG Communications Unit, of Guinean nationality, lives in Dabondy Ecole, Commune of Matoto, Conakry;

5- **Etienne SOROPOGUI**: (49 abs) born on 24 August 1972 in Conakry, former Member of the Independent National Electoral Commission (CENI), former Vice-President of the New

Democratic Forces (NFD), Chairman of the political movement known and called **Nos Valeurs Communes** (NVC), Founder of the UFDG, of Guinean nationality, residing at Lambanyi, Commune of Ratoma, Conakry (hereinafter referred to as **'The applicants'**).

2. The defendant is the State of Guinea, a Member State of the ECOWAS Community, signatory to the African Charter on Human and Peoples' Rights as well as other international instruments relating to the protection of human rights (hereinafter referred to as **"The defendant"**).

IV. *INTRODUCTION*

3. The purpose of the present proceedings is to examine the application by which the applicants seek a declaration that the defendant has violated their right not to be arbitrarily detained, their right to a fair trial, in particular their right to the presumption of innocence, their right to be tried within a reasonable period and their right not to be subjected to torture or cruel, inhuman or degrading treatment.

They request that the defendant be ordered to pay each of them the sum of 40 million CFA francs in damages. The defendant, which considers that the application is unfounded, requests instead that the Court dismiss all the applicants' claims.

V. PROCEEDINGS BEFORE THE COURT

4. On 5 March 2021, the applicants filed an application with the Registry of the Court against the defendant for violation of their human rights;

5. At the time of filing the main application, the applicants submitted, through a separate document, an application seeking to have the case admitted to an expedited procedure.

The initiating application and the request for an expedited procedure were served on the defendant on 11 March 2021;

6. On 26 March 2021, the applicants filed additional documents with the Registry of the Court to support their request for the case to be heard under an expedited procedure.
These documents were served on the defendant on 12 April 2021;

7. On 30 April 2021, the defendant filed with the Registry of the Court a statement of defence in response to the main application and a statement of defence in response to the request for expedited proceedings.
These two briefs were notified to the applicants on 3rd May 2021;

8. On 30 September 2021, the decision to suspend all proceedings before the ECOWAS Court of Justice was taken against Mali and Guinea.
The procedure remained dormant until 25th November 2022, when the suspension measure was lifted;

9. At the hearing on 8 May 2023, the applicants submitted new documents to the case file. These documents were immediately notified on the defendant;

10. On 16 October 2023, all parties were represented at the hearing by their counsel who argued the merits of the case and the Court placed the case for deliberations.

VI. *ARGUMENTS OF THE APPLICANTS*

(a) *Statement of facts*

11. The applicants maintain that the day after the Presidential Elections in Guinea, Mr. Mamadou Cellou Dalein DIALLO and his family were held captive at his home for ten (10) days and the Headquarters of his party, the Union of Democratic Forces of Guinea (UFDG), was put under lock by the security officers. The Applicants aver that they were not notified of

any court order or administrative decision to justify the sequestration of Mamadou Cellou Dalein DIALLO and the closure of his party's premises ;

12. They maintain that several people, whether or not they were responsible for the UFDG, the ANAD and the National Front for the Defense of the Constitution (FNDC), were illegally arrested, kidnapped at night, injured or killed by the security forces;

13. The applicants claim that since 19 October 2020, the State of Guinea has recorded more than 50 deaths, most of whom were killed by bullets fired by law enforcement officers, as well as more than 350 people arbitrarily arrested and detained. Among the many citizens illegally arrested and detained for political reasons, there are senior officials of the UFDG and ANAD, including Ibrahima Cherif BAH, Ousmane Gaoual DIALLO, Mamadou Cellou BALDE, Abdoulaye BAH and Etienne SOROPOGUI, who have been placed in pre-trial detention for reasons they dispute;

14. The applicants explain that by a letter rogatory dated October 14, 2020, the senior investigating judge of the Court of First Instance (TPI) of Dixinn, a commune located in Conakry, capital of the Republic of Guinea, instructed the Central Directorate of the Judicial Police (DCPJ) to carry out a certain number of investigative actions, in particular to search for and arrest persons suspected of having participated directly or indirectly in the commission of the offenses provided for in Articles 846 et seq., 282 et seq., 784 et seq. of the Penal Code, to carry out all home visits, searches and seizures necessary to determine the circumstances of the commission of said offenses in the neighborhoods and surroundings of Kakimbo, Wanidara, Cimenterie fofomèrè and lambagni canadien, to draw up an inventory of all seized objects;

15. They report that on Tuesday, November 10, 2020, the Public Prosecutor at the Court of First Instance of Dixinn, relying on the provisions of Article 8 of the Code of Criminal Procedure, made a statement stating, among other things, that: *" The investigating officer is continuing, in strict compliance with the rules of procedure, the execution of the letters rogatory by actively*

searching for certain persons, including Ousmane Gaoual D IALLO, Mamadou Cellou BALDE, Ibrahima Chérif BAH, Abdoulaye BAH, Etienne SOROPOGUI, Sékou KOUNDOUNO, who made threats likely to disturb public security and order ._";

16. The applicants claim that on Wednesday, November 11, 2020, Ibrahima Cherif BAH, Vice-Chairman in charge of external relations of the UFDG, was arrested at his home and taken to the premises of the Headquarters of the Criminal Investigations.
They indicate that on 12th November 2020, Ousmane Gaoual DIALLO, Etienne SOROPOGUI and Abdoulaye BAH summoned by the Headquarters of the Criminal Investigations, voluntarily appeared with their lawyers to avoid any violent arrest and that Mamadou Cellou BALDE did the same on Friday, 13th November 2020;

17. The applicants state that they were questioned by the investigators on facts which were not covered by the letters rogatory or by the summonses sent to them;
18. They claim that the investigators' questions focused mainly on statements they allegedly made before, during and after the election of 18 October 2020 and that at no time during the police investigation were there any questions raised about the offences of manufacturing, acquiring, storing, possessing, using light weapons, war, possessing ammunition, making threats and criminal association, violence, willful harm to life, disrupting the State by devastation, participation in an insurrectional movement, making images or writings of a racist or xenophobic nature available through a computer system and conspiracy mentioned in their indictment;

19. The applicants point out that no weapons or ammunition were shown to them and that no mention was made of any search, home search or seizure relating to these offences;

20. Applicants report that on Monday, 16th November 2020, Ousmane Gaoual DIALLO, Etienne SOROPOGUI, Mamadou Cellou BALDE and Abdoulaye BAH were brought before

the Dean of the Investigating Judges who, after charging them with the offenses of manufacturing, acquiring, storing, possessing, using light weapons, war weapons, possessing of ammunition, placed them in pre-trial detention and forced them to hold a slate with the words "CONSPIRACY" written on it;

(b) Pleas – in - law Invoked:

21. In support of their claims, the Applicants invoke the following legal grounds:

- Violation of the right to a fair trial under Articles 7 of the African Charter on Human and Peoples' Rights (ACHPR), 10 and 11 of the Universal Declaration of Human Rights (UDHR), and 14 of the International Covenant on Civil and Political Rights (ICCPR);

- Violation of their right not to be arbitrarily detained under Articles 6 of the ACHPR, 9 of the ICCPR, and 9 of the UDHR;

- Violation of their right not to be subjected to torture or inhuman, cruel, or degrading treatment under Articles 5 of the ACHPR, 5 of the UDHR, and 7 of the ICCPR.

c) Conclusions:

22. The Applicants seek from the Court

- **A DECLARATION** that the Application is admissible;

- **A DECLARATION** that it has jurisdiction over the present case as filed;

- **A DECLARATION** that the Defendant has violated their right not to be arbitrarily detained, their right not to be subjected to torture, inhuman, cruel, or degrading treatment, and their right to a fair trial;

- **AN ORDER** on the Defendant to immediately release the Applicants Ibrahima Chérif BAH, Abdoulaye BAH, Mamadou Cellou BALDE, Ousmane Gaoual DIALLO, and Etienne SOROPOGUI;

- **AN ORDER** on the Defendant to pay each of the Applicants Ibrahima Chérif BAH, Abdoulaye BAH, Mamadou Cellou BALDE, Ousmane Gaoual DIALLO, and Etienne SOROPOGUI the sum of 40 million CFA francs as compensation for the harm caused by the violation of their rights guaranteed and protected by the aforementioned international instruments;

- **AN ORDER** on the Defendant to immediately reopen the investigation and prosecute the alleged perpetrators of the aforementioned human rights violations;

- **ANY OTHER ORDER** that the Court deems appropriate in the circumstances of the case;

- **AN ORDER** on the Defendant to bear the full litigation costs.

VII. ARGUMENTS OF THE DEFENDANT

(a) Statement of facts

23. The Defendant states that by an application dated 4 March 2021, titled "Individual Application," received and registered at the Registry of the ECOWAS Court of Justice on 5 March 2021 under No. ECW/CCJ/APP/10/21, Ibrahima Cherif BAH and four (4) others brought a case before the Court against the Defendant for the violation of their human rights and the payment of damages;

24. The Defendant explains that following the reporting of a series of offenses to its Public Prosecutor's Office by the police in October 2020, the Public Prosecutor at the Court of First Instance of Dixinn requested the opening of a judicial investigation at the office of the Dean of the Investigating Judges of that court against X for acts of storage, transfer, manufacture,

possession, and illegal carrying of light and small-caliber weapons, as well as their ammunition and other related materials, murder and complicity in murder, arson, dissemination or provision to others of data likely to disturb public security and order, possession and consumption of drugs, threats of violence or death through a computer system, public disorder through devastation and looting, participation in an insurrectionary movement, attacks on the institutions of the Republic, and complicity in attacks on said institutions; acts provided for and punishable under Articles 846 et seq., 282 et seq., and 784 et seq. of the Penal Code;

25. The Defendant explains that immediately, the investigating magistrate issued a rogatory commission to the investigating officer of the Central Directorate of Judicial Police, to:

- *"Search for and apprehend persons suspected of having participated directly or indirectly in the commission of the aforementioned offenses;*

- *Conduct all necessary house searches, seizures, and inventories of seized items in the neighborhoods and surroundings of Kakimbo, Wanindara, Cimenterie, Fofomèrè, and Lambanyi Canadien;*

- *Conduct a neighborhood investigation by collecting statements from all persons wishing to contribute to the revelation of the truth;*

- *Inform the magistrate, in advance, of the application of the provisions of Article 21 of the Code of Criminal Procedure;*

- *Inform the magistrate of any custody measures that may be taken in the execution of this letter rogatory."*

26. The Defendant reports that this rogatory commission from the office of the Dean of the Investigating Judges of the Court of First Instance of Dixinn, dated 14 October 2020, was transmitted by letter from the Public Prosecutor on 23 October 2020, copies of which are attached;

27. The Defendant states that several persons were apprehended in the execution of the aforementioned rogatory commission, including Ibrahima Cherif BAH, Abdoulaye BAH, Mamadou Cellou BALDE, Ousmane Gaoual DIALLO, and Etienne SOROPOGUI, the Applicants in this case;

28. The Defendant explains that, in parallel with the execution of the rogatory commission, the Matam Criminal Brigade had opened an investigation into the arson of the RUSSAL FRIGUIA train on 23 October 2020, with other charges as criminal association, assassinations, destruction of public and private buildings, intentional assault and battery, theft under aggravated circumstances, and unlawful participation in a gathering;

29. The Defendant alleges that during the preliminary investigation, each of the Applicants was heard in the presence of their lawyers to ensure the transparency of the procedure and respect for the right of defense;

30. The Defendant produces, by way of example, the transcripts of the preliminary investigation hearings of Ibrahima Cherif BAH, Ousmane Gaoual DIALLO, and Abdoulaye BAH, which clearly show, on the last pages, that they were assisted by Maîtres Mohamed TRAORE, DIOP Mamadou Souaré, Modibo CAMARA, Abdoulaye KEITA, Amadou Babahein CAMARA, Thierno Souleymane BARRY, and Amadou DIALLO, and that they were brought before the office of the Dean of the Investigating Judges of the Court of First Instance of Dixinn, who had issued the aforementioned Letter rogatory, and were placed in pre-trial detention, then issued detention orders against them during their first appearance;

31. The Defendant reveals that due to the presence of minors among the accused, their counsel, the Special Prosecutor at the Children's Court, and the Public Prosecutor at the Court of First Instance of Dixinn all requested and obtained the transfer of the case from the office of the Dean of the Investigating Judges of the Tribunal of First Instance of Dixinn to the Children's Court;

32. The Defendant adds that, in order to safeguard the urgent nature of the proceedings and in strict compliance with the rights of the parties, a panel of three investigating judges was temporarily put together by Order No. 379/CAB/PP/CA/CKRY/20 dated 9 December 2020, issued by the First President of the Court of Appeal of Conakry, and by Orders Nos. 046, 056, 063, 085, and 095 of 18, 19, and 21 January 2021, the panel of investigating judges confirmed the detention orders issued on 16 November 2020 against Messrs. Ibrahima Chérif BAH and four others, as well as the other persons prosecuted in the same case;

33. The Defendant reports that by letter dated 10 February 2021, the team of lawyers appointed to defend the accused persons informed the panel of investigating judges in charge of the case of the suspension of their participation in the proceedings, claiming that the proceedings were biased, although all defense rights had always been observed without any recourse being exercised regarding their violation;

34. The Defendant further states that, for health reasons, the Prosecutor at the Special Children's Court, based on a medical certificate issued by Professor Mamady CONDE, Head of the Cardiology Department at the Ignace Deen Hospital, requested the hospitalization of the Applicant Ibrahima Chérif BAH in a better-equipped hospital;

35. The Defendant states that it is surprised to be brought before the ECOWAS Court of Justice by the Applicants for violation of their fundamental rights and freedoms, given that the panel

of investigating judges granted the request of the Prosecutor at the Special Children's Court and that the Applicant Ibrahima Chérif BAH has since been hospitalized in a local hospital to receive the necessary and appropriate medical care required by his health condition.

(b) ***Pleas – in - law invoked***

36. The Defendant rejects the Applicants' allegations that it has violated their right to a fair trial, their right not to be arbitrarily detained, and their right not to be subjected to torture, cruel, inhuman, or degrading treatment;

c) ***Conclusions***

37. The Defendant solicits that may it please the Court

- To declare and adjudge that it has not violated the Applicants' right to a fair trial, their right not to be arbitrarily detained, or their right not to be subjected to torture, inhuman, cruel, or degrading treatment;

- To declare and adjudge that the Applicants' claims are unfounded and dismiss them altogether;

- To order the Applicants to bear the full costs of the proceedings.

VIII. ON *JURISDICTION*

38. The Court recalls that in matters of human rights, and under the provisions of Article 9(4) of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court of Justice of the Community, "The Court has jurisdiction to *examine cases of human rights violations that occur in any Member State."*

The Court has consistently held that the mere invocation of human rights violations in the application is sufficient for it to assert jurisdiction (Judgment *No. ECW/CCJ/JUD/57/23 of 15 December 2023: Mohamed BAZOUM and two others v. Republic of Niger, §28);*

39. The Court notes that in this case, the rights invoked by the Applicants, namely their right to a fair trial, their right not to be arbitrarily detained, and their right not to be subjected to torture or inhuman, cruel, or degrading treatment, are part of the human rights whose protection falls within its jurisdiction;

40. The Defendant being a Member State of ECOWAS, all conditions are met for the Court, in accordance with its consistent jurisprudence, to declare itself competent to hear this case;

IX. ON *ADMISSIBILITY*

41. The Court notes that for an application before it to be declared as admissible, it is necessary, under the provisions of Article 10(d) of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court, that the applicant be a "*person who is a victim of a human rights violation;*

The application submitted for this purpose:

i) must not be anonymous;

ii) shall not be brought before the Court of Justice of the Community if it has already been brought before another competent international court.";

42. In this case, the Court notes that the Applicants, who claim to be victims of human rights violations, are clearly identified. They are Ibrahima Chérif BAH, Abdoulaye BAH, Mamadou Cellou BALDE, Ousmane Gaoual DIALLO, and Etienne SOROPOGUI. The application is therefore not anonymous;

43. Furthermore, there is no evidence that the Applicants have brought the same case before another competent international court for human rights. Under these circumstances, in accordance with its settled case - law, the Court must declare the application admissible as it has satisfied all textual requirements. The Court so held in Judgment No. ECW/CCJ/JUD/26/20 Fodi Mamane and 14 others v. Republic of Niger;

X PROCEDURE BEFORE THE COURT

ON THE SEEKING THE CASE TO BE ADMITTED TO EXPEDITED PROCEDURE:

44. By a separate filing dated 5 March 2021, the Applicants requested the Court to admit the present case to the expedited procedure;

45. In support of their request, the Applicants state that by their main application, they have brought the Defendant before the ECOWAS Court of Justice for violation of their fundamental rights and freedoms. They request through this application that the dispute between them and the Defendant be examined under the expedited procedure provided for in Article 59 of the Court's Rules of Procedure;

46. To justify this measure by the Court, they invoke the conditions of their detention, their vulnerability, and the health context.

Applicants state that human rights organizations such as Amnesty International and Human Rights Watch have highlighted in their successive reports the urgency of their situation due to the overcrowding of the central prison in Conakry where they are detained. They argue that in the context of the COVID-19 pandemic and the resurgence of the Ebola virus, detainees are at great risk because it is impossible to respect barrier measures, particularly social distancing, while COVID-19 has been detected in the central prison of Conakry. They emphasize the particular case of the Applicant Ibrahima Chérif BAH, who is very vulnerable due to his advanced age (73 years) but has been forced to live in detention for four months in inappropriate conditions;

47. The Applicants therefore consider that there is an urgent need for the ECOWAS Court of Justice to rule as quickly as possible under the expedited procedure to find the illegality of their detention, the violation of the presumption of innocence, the violation of the right to a fair trial, and the violation of the right not to be subjected to torture, cruel, inhuman, or degrading treatment;

48. The Defendant requests that the Applicants' request to submit the case to the expedited procedure be declared unfounded;

49. The Defendant explains that the COVID-19 pandemic invoked by the Applicants affects both detainees and non-detainees. It is a general phenomenon and cannot be invoked by a few detainees as a particular situation;

50. The Defendant considers that COVID-19 is not a reason to empty prisons of detainees. It argues that it is sufficient to strengthen the recommended sanitary barrier measures;

51. As for the resurgence of the Ebola virus in the forest region of Guinea, the Defendant states that the affected area is far from Conakry, where the Applicants are in pre-trial detention, and that it is under control;

52. The Defendant notes that the Applicant Ibrahima Chérif BAH is now being treated in a local hospital where he is hospitalized and receiving appropriate care;

53. The Defendant recalls that a case can only be submitted to the expedited procedure when the particular urgency of the case requires the Court to rule as quickly as possible, in accordance with the provisions of Article 59(1) of the Rules of Procedure of the ECOWAS Court of Justice;

54. The Defendant observes that in this case, the grounds invoked by the Applicants in support of this request are essentially alleged violations of their fundamental rights, which they have invoked as the basis for their initial claims, so that their separate examination of the grounds of the application would devoid the main proceedings of their substance;

55. The Defendant requests that the present request to submit the case to the expedited procedure be rejected as unfounded, as it considers that the conditions of urgency required for the implementation of the expedited procedure are not met in this case;

COURT ANALYSIS

56. Regarding the expedited procedure, the Court notes that Article 59 of the Rules provides that "At the request of either the applicant or the defendant, the President may exceptionally, on the basis of the facts presented to him, after hearing the other party, decide to submit a case to an expedited procedure derogating from the provisions of these Rules, where the particular urgency of the case requires the Court to rule as quickly as possible.";

57. The Court recalls that the application of Article 59 of the Rules presupposes the existence of a particular urgency, the presence of which in the case must be established by the applicant. Indeed, the applicant is required to indicate, by specific reasoning, the reasons why it considers that an urgent decision is required in the case;

58. The applicant must demonstrate that it is imperative for the Court to rule as quickly as possible, either to put an end to a manifest violation of his rights or to prevent an imminent risk of violation of his fundamental rights. See (CJ/ECOWAS Order No. ECW/CCJ/ADD/09/15 of 14 December 2015);

59. The Court notes that in this case, the Applicants invoke as grounds to justify the admission of the case to the expedited procedure the COVID-19 pandemic and the Ebola virus disease, which they risk contracting in prison since it is difficult, if not impossible, to respect barrier measures, particularly social distancing;

60. The Court observes that the COVID-19 pandemic is a global phenomenon whose spread is not slowed by being at liberty. The Court recalls that among the barrier measures is precisely confinement, which consists of inviting the population to remain confined at home and to go

out only for the purpose of obtaining food supplies. This has led courts to hold their hearings virtually and employees to perform their duties through teleworking;

61. The Court therefore considers that the prevalence of COVID-19 cannot serve as a reason to justify the submission of the case to the expedited procedure, especially since the logical consequence of such a decision in favor of the Applicants would imply, unless discrimination is accepted, the release of all other detainees;

As for the resurgence of the Ebola virus disease, the Court notes that it can be deduced from the case file, particularly from the uncontested statements of the Defendant, that it is confined to a well-controlled area far from the central prison of Conakry where the Applicants are detained. It therefore cannot serve as a basis for the admission of the case to the expedited procedure;

62. The Court further recalls that the Applicants also invoke the state of health of Ibrahima Chérif BAH to request that the case be examined under the expedited procedure. They argue that the Applicant Ibrahima Chérif BAH is very vulnerable due to his advanced age (73 years) and has been living in detention for four months in inappropriate conditions;

63. The Court also notes that it appears from the case file that the Applicant Ibrahima Chérif BAH has been admitted to a hospital where he is being treated and receiving appropriate care. The invocation of the state of health of this Applicant is therefore not relevant and cannot succeed;

64. The Court notes that in this case, the Applicants do not demonstrate that, in accordance with the provisions of Article 59 of the Rules, the particular urgency of the case requires the Court to rule as quickly as possible;

When the Court considers that the facts alleged by the applicant do not in any way characterize the existence of an imminent and irreversible peril that could justify the taking of a decision within a short period of time, it rejects the request for admission of the case to the expedited procedure.

(See Case No. ECW/CCJ/ORD/06/12 Idrissa Maïga v. Republic of Mali);

65. The Court holds that in this case, there is no particular urgency that could justify the admission of the case to the expedited procedure. Consequently, failing to meet the conditions set under Article 59 of the Rules, as evidenced by the explanations of the parties, the Court must reject the request to admit the case to the expedited procedure.

XI ON THE MERITS OF THE CASE

66. The Applicants invoke the violation, by the Defendant, of their right to a fair trial **(A)**, their right not to be arbitrarily detained **(B)**, and their right not to be subjected to torture, cruel, inhuman, or degrading treatment **(C)**.

The Court will examine each of the Applicants' claims in turn.

A. ON THE VIOLATION OF THE RIGHT TO A FAIR TRIAL:

67. The Court notes that the right to a fair trial is one of the main criteria for qualifying a democratic society. Indeed, a fair trial is a vital concept, at the heart of any judicial system that respects democratic principles;

68. A fair trial is one that respects and protects the essential rights of all persons involved in a contentious procedure pending before a court of law. This means that each party must have an equal opportunity to present its case before an independent and impartial tribunal that must rule publicly within a reasonable time. It is based, above all, on the transmission of all the facts in the possession of the parties;

69. The importance of the right to a fair trial is highlighted by its inclusion in various legal instruments for the protection of human rights, such as the African Charter on Human and Peoples' Rights (ACHPR), the European Convention on Human Rights (ECHR), the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR);

70. The right to a fair trial is a fundamental right. It is governed in particular by Article 14 of the ICCPR, which provides that *" All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....."*;

71. Similarly, Article 6 of the European Convention on Human Rights provides that: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*;

72. The Court emphasizes that there is a violation of the right to a fair trial "*when it appears in the procedure several shortcomings that do not allow the applicants to be able to know and discuss the content of the documents filed in the case file."*

This is evident from the judgment ECW/CCJ/JUD/03/16 of the ECOWAS Court of Justice in the case of Ibrahim Sorry Touré and Issiaka Bangoura. Similarly, in the judgment Mirilachvili v. Russia of 5 June 2009, the European Court of Human Rights held: *"that the defense was seriously disadvantaged compared to the prosecution with respect to the examination of a crucial part of the case file. Given the importance of appearances in criminal justice, the Court considers that the criticized procedure, taken as a whole, did not meet the requirements of a fair trial," "the use as evidence of statements taken during the police investigation is not in itself incompatible with Article 6, provided that the rights of the defense are respected."*

The right to a fair trial maintains public confidence in the judicial system to ensure the protection of everyone's rights;

73. The right to a fair trial includes the right to a public hearing, the right to a lawyer, the right to present evidence and cross-examine witnesses, the right to the presumption of innocence, the right to a judgment within a reasonable time, the right to an effective remedy, the right to defense, respect for the authority of *res judicata*...;

74. Regarding the violation of their right to a fair trial, the Applicants have focused their argument on the non-respect of their right to the presumption of innocence (1), the violation of the right to be tried within a reasonable time (2), and the violation of their right to defense (3), which are among the elements constituting a fair trial.

1) *ON THE VIOLATION OF THE PRESUMPTION OF INNOCENCE*

75. The Applicants argue that, in disregard for the right to the presumption of innocence, the Criminal Investigating Department of the Police photographed them individually, forcing them to hold a slate on which the name of the person concerned was written with the word "CONSPIRACY.";

76. Plaintiffs argue that although they were not heard on the facts alleged against them, a report prepared by the Ministry of Territorial Administration and Decentralization and the Ministry of Security and Protection, and transmitted to certain diplomatic representations in Guinea and to certain media, presents them as being the authors of conspiracies who are also guilty of acts of participation in an insurrectionary movement or disturbances to the State;

77. The Applicants assert that these acts, which are intended to humiliate them, constitute a serious violation of the principle of the presumption of innocence and undermine the secrecy of the investigation;

78. The Defendant states that, according to the Applicants, the Public Prosecutor, by publicly declaring that some of them are actively sought, while their homes are known, violated their rights without specifying the nature of these rights;

79. The Defendant argues that the statements of the Public Prosecutor were made in accordance with the provisions of Article 8(3) of the Guinean Code of Criminal Procedure, which provides that: *"However, in order to avoid the spread of incomplete or inaccurate information or to put an end to a disturbance of public order, the Public Prosecutor may, on his own initiative or at the request of the investigating tribunal or the parties, make public objective statements drawn from the proceedings that do not contain any assessment of the merits of the charges against the persons concerned.";*

80. The Defendant considers that by making the incriminated statement, the Public Prosecutor was merely fulfilling his duty to inform the populations and international public opinion on the progress of the proceedings relating to these facts and that he therefore did not violate the presumption of innocence since he did not make any assessment of the merits of the charges against the accused;

81. The Defendant concludes that this ground should be rejected as unfounded. It notes that the right to a fair trial, which means that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall determine either any criminal charge against him or his rights and obligations in a suit at law, has not been violated with respect to the Applicants;

82. Indeed, the Defendant argues that in this case, not only are the institutions of investigation, prosecution, and judgment pre-established by law, but also the proceedings concerning the Applicants are conducted within the strict framework of the law, whether it is the conduct of the proceedings, the prosecutions brought, or the measures taken against them;

83. The Defendant argues that the investigating judge in charge of the investigation is conducting the investigation for both the prosecution and the defense, in accordance with Article 147 of the Guinean Code of Criminal Procedure, in strict compliance with the presumption of innocence enjoyed by the Applicants;

COURT ANALYSIS

84. The Court notes that the presumption of innocence is enshrined in Article 14(2) of the ICCPR, Article 7(1)(b) of the ACHPR, and Article 11(1) of the UDHR, which require respect for the innocence of a person charged with an offense and prohibit the imposition of criminal penalties associated with the status of a convicted person;

85. The Court observes that, in its common definition, the presumption of innocence means that an individual, even suspected of having committed an offense, cannot be considered guilty until he has been definitively judged and recognized as such by a competent court. It is a legal principle according to which any person subject to criminal prosecution is presumed innocent until his guilt has been legally established;

86. It is based on Articles 6 of the European Convention on Human Rights and 11 of the Universal Declaration of Human Rights;

Under Article 11 of the UDHR, "*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*";

87. The Court specifies that the violation of the right to the presumption of innocence may result from various facts; for example, the dissemination of images of a person in handcuffs when he has not yet been convicted. Such an act is in principle prohibited and may be characteristic of the violation of the presumption of innocence;

88. In this case, the Applicants allege that, in disregard of the right to the presumption of innocence, they were all forced to be photographed in turn holding a slate on which the word "CONSPIRACY" was written, along with their identity. They submit to the file document No. 4 to attest to the veracity of their statements;

89. The Court observes, upon examination of this document, that it does not show the photographs of the Applicants holding a slate with the word "CONSPIRACY" but rather press articles reporting their arrest and placement in police custody. The Court also notes that no other document in the file contains the image claimed by the Applicants;

90. The Court observes that even if this document had been produced in the file, its mere existence would not have been sufficient to characterize the violation of the right to the presumption of innocence, because for this to be the case, this image must have been made available to the public through dissemination or publication before any court decision establishing the guilt of the Applicants;

91. Since the Applicants have not alleged that their photographs taken with a slate indicating their identity and bearing the word "CONSPIRACY" were published while they have not been declared guilty of the offenses alleged against them by a competent court, the Court finds that the evidence of the violation of the right to the presumption of innocence has not been provided by the Applicants;

On the other hand, the examination of the document entitled *"Report on Political Violence in Guinea (2019-2020) and Ongoing Investigations" submitted to the case file by the Applicants (Document No. 14) reveals in Part VI - A the following statement: "This led to the arrest of these radical instigators of post-election violence recorded in our country, namely:*

- Ibrahima Chérif BAH, 1st Vice-Chairman of the UFDG;

- Ousmane Gaoual DIALLO, former MP, member of the political council and coordinator of the communication unit of the UFDG;

- Abdoulaye BAH, former special delegate of Kindia, Secretary General in charge of animation and marketing, campaign director of the UFDG in the Kindia region;

- Etienne SOROPOGUI, Chairman of the Political Movement 'Nos Valeurs Communes';

- Mamadou Cellou BALDE, influential member of the UFDG in Labé, Vice-Chairman of the Electoral Commission and Head of the Interior Federation." ;

92. The Court is of the opinion that the statements in the report in question are unequivocal, as they clearly indicate that the Applicants are the instigators of the violence that occurred in Guinea during the 2020 electoral period;

93. The Court considers that such statements, while the proceedings against the Applicants are only at the preliminary investigation stage, which is covered by professional secrecy in general and more specifically by the secrecy of the investigation, constitute an irremediable violation of the presumption of innocence if they are published.

Indeed, the ECOWAS Court of Justice, in the case of Khalifa SALL, clearly stated that: *"The concern for respect for the right to information of citizens cannot justify any violation of the right to the presumption of innocence."*

94. Similarly, in its judgment No. ECW/CCJ/JUG/04/13 of 22 February 2013, § 67, the Court held that *"the presumption of innocence provided for in Article 7.1(b) of the African Charter on Human and Peoples' Rights is disregarded, insofar as without prior legal establishment of their guilt, the Special Prosecutor, through his press conference, reflects that the Applicants are guilty of embezzlement and states more precisely: we are hunting for billions of CFA francs. As far as I know, X... is accused of a whole of 100 million CFA francs; however, our attention is focused on those who have embezzled billions of CFA francs." ;*

95. The Court nevertheless questions the reliability of this document because, for a report that is supposed to have been prepared by two ministries, namely the Ministry of Territorial Administration and Decentralization and the Ministry of Security and Protection, it does not bear the logo of either of these ministries. It also does not bear the stamp of these ministries or the identity of an authority belonging to these ministries. The report in question, which should, under these circumstances, have been co-signed by the two drafting ministries, is not signed by either of these ministries. The pages of the report are not numbered, so that in view of all these

anomalies, the Court considers that it is not an official document that can allow it to base its conviction as to the actuality of the alleged violation of the Applicants' right to the presumption of innocence;

96. The Court therefore finds that, clearly, the Defendant has not violated the Applicants' right to the presumption of innocence.

2 ***ON THE VIOLATION OF THE RIGHT TO BE TRIED WITHIN A REASONABLE PERIOD***

97. The Applicants argue that the Defendant cannot contest their arrest and detention, which occurred in execution of the rogatory commission of the investigating magistrate seized by the introductory requisition of the Public Prosecutor.

They observe that the rogatory commission of the investigating judge and the requisition of the Public Prosecutor were issued on the same day, namely 14 October 2020;

98. The Applicants further argue that they have been detained for more than three months without being questioned on the merits in the context of the prosecutions brought against them for the offenses with which they are charged.

They consider that these facts constitute a violation of their right to be tried within a reasonable time;

99. The Defendant retorts that it was in execution of a rogatory commission that they were arrested and detained. Guinea adds that the fact that the introductory requisition and the rogatory commission were issued on the same day does not constitute a violation of the Applicants' rights, since no time limit is provided between the two acts;

100. The Defendant argues that the Applicants do not provide evidence of the alleged violation of their rights but merely list them and claim that they have been violated. It states that the Applicants' claims cannot characterize such a violation, as the evidence that should serve to establish the Court's conviction has not been provided;

COURT ANALYSIS

101. The Court notes that the right to be tried within a reasonable time is provided for in Articles 7(1) (d) of the ACHPR, 9(3) of the ICCPR, and 6(1) of the European Convention on Human Rights;

102. The Court recalls that Article 7 of the ACHPR provides that *"Every individual shall have the right to have his cause heard. This right includes:*

d) the right to be tried within a reasonable time by an impartial court or tribunal."

As for Article 9(3) of the ICCPR, it provides, inter alia, that "*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."*

Under Article 6(1) of the European Convention on Human Rights, "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.";*

103. The jurisprudence of the European Court of Human Rights (ECHR) has drawn from these provisions the consequence that the Contracting States must organize their judicial system so that their courts and tribunals can play their role effectively and expeditiously. For the ECHR,

this is to ensure "that justice is not rendered with delays that could compromise its effectiveness and credibility."

104. The reasonableness of the duration of a procedure is assessed according to the circumstances of the case. (ECHR 12 October 1992, Boddaert v. Belgium, No. 12919/87, § 36), in light of the criteria developed by the Court's jurisprudence, namely: the complexity of the case, the conduct of the applicant and the competent authorities, and the importance of the case for the individual.

105. In this case, the Applicants invoke the violation of Article 7(1) of the ACHPR. Indeed, they argue that they have been detained for more than three months without being questioned on the merits in the context of the charges brought against them. They consider that these facts constitute a violation of their right to be tried within a reasonable time.

They invite the Court to find that they have not been tried within a reasonable time and to order their release;

106. The Court notes that the Applicants Ibrahima Chérif BAH, Abdoulaye BAH, Ousmane Gaoual DIALLO, Etienne SOROPOGUI, and Mamadou Cellou BALDE were arrested on 11, 12, and 13 November 2020, respectively, and that they were charged and placed under detention, following a committal order issued against them by the Dean of the Investigating Judges on 13 November 2020 for Ibrahima Chérif BAH and on 16 November 2020 for all the others;

107. The Court observes that it appears from the case file, in particular from document No. 6, that an order for referral to the criminal court was issued on 29 April 2021 by the investigating magistrate, and that this order was not produced in the file.

108. The Court also notes that it appears from a letter from one of the Applicants' counsel, Maître Ivan Terel, dated 7 May 2023 and received at the Registry of the Court the following day, 8 May 2023, which the Applicants are no longer detained, without indicating the date on which they were released.

109. The Court further observes that it does not appear from the case file that a judgment has been rendered by the criminal court before which the accused were referred.

110. The Court notes that from the date of the Applicants' indictment and their detention (13 and 16 November 2020) to date, a period of four years has elapsed without the Applicants being tried.

111. The Court therefore finds that, given the nature of the facts alleged against the Applicants, which do not present any particular complexity since the investigating magistrate has already issued an order referring the Applicants to the trial court and all that remains is to enroll the case for the court to rule, the four-year period of waiting without a court decision being rendered exceeds the measure of reasonableness. Therefore, there is no doubt that the Applicants' right to be tried within a reasonable time has been violated by the Defendant.

3 ON THE VIOLATION OF THE RIGHT OF DEFENCE

112. To support their claim that their right to defense has been violated by the Defendant, the Applicants explain that in January 2021, the Guinean Ministry of Foreign Affairs refrained from responding to the request for authorization to access Guinean territory made by Maîtres

Patrick Klugman and Ivan Terel, lawyers at the Paris Bar and duly designated by them to join the college of lawyers appointed for their defense;

113. They state that despite the cooperation agreement concluded between the Paris Bar and the Conakry Bar and a letter of introduction sent by the President of the Paris Bar to the President of the Conakry Bar, no response was given by the Ministry of Foreign Affairs to the request to travel to Guinea made by the aforementioned French lawyers in order to meet them. They conclude that they were thus prevented from meeting their French lawyers **(Exhibits No. 10, 11, and 12);**

114. The Applicants emphasize that, in addition to this refusal by the Ministry of Foreign Affairs, there was the refusal by the pool of investigating judges in charge of the case to make the case file available to the collective of defense lawyers, as well as repeated violations of the provisions of Article 202 of the Guinean Code of Criminal Procedure;

115. Faced with the gravity of the violations of the fundamental rights of their clients and not wishing to further lend themselves to a procedure tainted by numerous violations of the rights of the defense, the college of lawyers appointed for their defense informed the investigating judge by letter dated 10 February 2021 of the suspension of their mission **(Exhibit No. 13);**

116. The Defendant retorts that, with regard to the right to defense, since the police investigation, each of the Applicants has been assisted by a team of lawyers who requested and obtained, together with the Public Prosecutor, the transfer of the case from the office of the Dean of the Investigating Judges of the Tribunal of First Instance of Dixinn to the Children's Court;

117. The Defendant notes that, the Applicants' lawyers preferred to suspend their participation in the proceedings against them voluntarily and for reasons of their own, which do not result from the contents of the case file.

The Defendant considers that, under these circumstances, for them to claim that their right to defence has been violated amounts to making a bad case against it;

COURT ANALYSIS

118. The Court notes that the right to defense is a prerogative available to a person during a trial. It ensures equality and fairness between adversaries in the context of the trial;

119. The Court observes that respect for the rights of the defence is a fundamental rule of justice, which consists of the right for any person to benefit from the assistance of a counsel and the possibility for each party to be represented by a lawyer;

120. The Court notes that the lawyer is a legal expert responsible for defending and representing the interests of his client before all courts;

121. The Court recalls that the lawyer has a general mandate to represent his client. To this end, he files all necessary procedural acts;

122. The Court therefore emphasizes the importance of the role of the lawyer in the conduct of a trial. Hence the interest for the parties to be assisted by as many lawyers as they can afford;

123. The Court observes that, in this case, while the Applicants allege that the Defendant did not authorize their French lawyers to defend them despite the presentation of the letter sent by the President of the Paris Bar to the President of the Conakry Bar, which they carry, the Defendant considers that since they are assisted by a team of lawyers, their argument that their right to defence has been violated because their French lawyers were not able to assist them lacks merit;

124. The Court recalls that the right to appoint a lawyer to ensure one's defense is not limited. The Applicants can therefore, despite the team of lawyers already available in Conakry to ensure their defense, call on lawyers from other countries with which their country has a cooperation agreement to strengthen the team of lawyers already constituted. The Defendant cannot therefore validly refuse the Applicants access to the lawyers they have appointed;

125. The Court notes that according to the jurisprudence of the European Court of Human Rights, the refusal of access to a lawyer irremediably compromises the rights of the defence and therefore constitutes a violation of these rights;

126. The Court observes that respect for the rights of the defense requires that the appointed lawyer enjoy unlimited and confidential access to his clients in order to have an interview with them concerning all the elements of the case file;

Thus, in a judgment of 13 September 2016, the European Court of Human Rights held that, "*even when compelling reasons may exceptionally justify the refusal of access to a lawyer, such a restriction, whatever its justification, must not unduly prejudice the rights arising for the accused from Article 6 of the European Convention on Human Rights.*";

127. The Court observes that, in this case, no reason has been invoked by the Defendant to refuse the Applicants access to their French lawyers. It therefore goes without saying that this unjustified refusal irremediably compromised the rights of the defense and constitutes a violation of these rights;

128. The Court recalls that with regard to the violation of their right to a fair trial, the Applicants also allege that the Defendant prevented them from having access to the criminal file relating to their case, thereby placing them in absolute impossibility to prepare their defence;

129. The Court admits that the possibility for an applicant to have access to the case file of the proceedings against him is a fundamental requirement guaranteed and controlled by all courts, as it constitutes irrefutable proof of respect for the right to an adversarial procedure and equality of arms. The adversarial nature cannot be effective if one of the parties to the trial is deprived of the documents filed in the case by its opponent. Such an omission to communicate the documents from one party to the other constitutes an undeniable substantive irregularity that taints the entire procedure;

130. The Court emphasizes that equality of arms requires judicial authorities to ensure that all parties to the trial are placed in the same conditions to organize their defence so as to avoid an imbalance in the relations between them. Equality of arms therefore prohibits one party from being advantaged over the other;

131. It is important to note that equality of arms, like the principle of adversarial proceedings, is one of the inherent elements of the definition of the notion of a fair trial;

132. The principle of adversarial proceedings entails the obligation to ensure that all parties to a trial receive communication and exchange of all documents and all exhibits produced in the case file and are able to discuss them with full knowledge of the facts;

133. This obligation has as a corollary the possibility for all parties to discuss the evidence produced and to make observations of any kind to guide the judge's decision;

134. The Court notes that this principle is based on the provisions of Articles 7 of the African Charter on Human and Peoples' Rights (ACHPR), 14 of the International Covenant on Civil and Political Rights (ICCPR), 10 of the Universal Declaration of Human Rights (UDHR), and 6 of the European Convention on Human Rights (ECHR), all of which deal with the right to a fair trial.

Under Article 14 of the ICCPR, "*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*"

Article 10 of the UDHR, which is in the same vein, provides that: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.";*

135. The importance of the protection of the principle of adversarial proceedings and equality of arms is perfectly demonstrated by the jurisprudence of the European Court of Human Rights. Thus, in its judgment Kuopila v. Finland (No. 27752/95 of 25 April 2000), this Court held that: "*the non-communication of evidence to the defence may undermine equality of arms as well as the principle of adversarial proceedings.";*

136. The same Court, in its judgment Matyjek v. Poland (No. 38184/03 of 24 April 2007), held that *"the fact that the accused had limited access to his file and to other documents constitutes a violation of the right to equality of arms.";*

137. Similarly, in its judgment Rowe and Danis v. United Kingdom (No. 28901/95 of 16 February 2002), the same Court noted that: *"the principle of adversarial proceedings requires that the prosecuting authorities communicate to the defense all relevant evidence in their possession, both inculpatory and exculpatory.";*

138. The jurisprudence of this Court regarding the principle of adversarial proceedings and equality of arms is very firm on the respect for the obligation to communicate all documents to the parties and to place them in the same conditions to organize their defence.

Thus, in a judgment of 16 February 2016 rendered in the case of Ibrahim Sory Bangoura and Issiaga Camara v. State of Guinea, the Court held that: *"the report of Commissioner CONDE was not communicated to the Applicants, although it was an essential document in the proceedings; that this report concerns acts of investigation, in particular the searches carried out at the Applicants' homes; that it is in fact the report of the searches carried out and which led to the seizure of objects on the one hand, and to the arrest of the Applicants on the other; that its communication was therefore necessary to allow the Applicants to discuss its content; that by not communicating it to the Applicants during the proceedings, the judicial authorities, in particular the investigating judge of cabinet No. 2 of the TGI of Kaloum of the Court of First Instance (TGI), violated the principle of adversarial proceedings....";*

139. In this case, the Court observes that the Applicants are the subject of criminal prosecutions on the basis of a criminal file to which neither they nor their counsel have had full and complete access;

140. The Court therefore concludes that the Defendant has violated the Applicants' right to defence, in particular the principle of adversarial proceedings and equality of arms, and consequently, their right to a fair trial.

B *ON THE VIOLATION OF THE RIGHT NOT TO BE ARBITRARILY DETAINED*

141. To support their claim that their detention is arbitrary, the Applicants allege that their arrest and detention, which occurred in an electoral context, followed the decision to surround the home and premises of the main opposition candidate. They consider that, consequently, the political motive of the criminal prosecutions brought against them is evident. They point out that even the introductory requisition of the Public Prosecutor bears the same date as the rogatory commission of the investigating judge, issued on 14 October 2020, four days before the presidential election of 18 October 2020. They argue that these arrests are in fact intended to prevent the candidacy of opponents to the current regime;

142. The Applicants also note that it appears from a report prepared by the Defendant and disseminated in diplomatic representations as well as in several media that the prosecutions brought against them and their detention have a political purpose and that they are accused of having organized political rallies, expressed their opposition to the current regime, expressed their political opinions, and considered seeking asylum abroad;

143. They further note that it is to mask the political purpose that the Defendant is prosecuting them for acts of manufacturing, acquiring, storing, possessing, or using light weapons, war weapons, ammunition, threats, criminal association, violence, intentional harm to life, public disorder through devastation, participation in an insurrectionary movement,

dissemination of racist or xenophobic images or writings through a computer system, and conspiracy;

144. The Applicants state that the Government report invoked clearly indicates that the acts with which they are charged and which justify their deprivation of liberty are in fact the result of the exercise of:

- their right to equal protection against discrimination (Article 7 UDHR) (the prosecutions are in fact motivated solely by the fact that the Applicants belong to the political opposition to the current regime);
- their right to move freely within their country, to leave it and to return (Article 13 UDHR) (the prosecutions are in fact motivated solely by the fact that the Applicants campaigned throughout the country in the context of an ongoing presidential campaign);
- their right to seek asylum (Article 14 UDHR) (the government report shows that it is in fact reproached to members of the opposition to have wanted to seek asylum at a foreign embassy after the presidential elections);
- their right to freedom of thought and conscience (Article 18 UDHR) (the government report emphasizes that it is in fact because of their opposition to the current regime and their mobilization in an electoral context);
- their right to freedom of opinion and expression (Article 19 UDHR) (the government report emphasizes that it is in fact only statements that are reproached to the Applicants and that is why the investigators questioned them only on their statements and writings);
- their right to freedom of peaceful assembly and association (Article 20 UDHR) (it is their participation and organization of rallies in an electoral context that is reproached to the Applicants);
- their right to take part in the conduct of public affairs of their country, to access public office, and to hold free elections (Article 21 UDHR) (it is the fact of having campaigned against the incumbent president that is purely and simply "criminalized" by the Republic of Guinea).

The Applicants therefore request the Court to qualify their detention as arbitrary;

145. The Defendant observes that the examination of the offenses with which each of the Applicants is charged shows that they are only common law offenses, the commission or constitution of which is not based on any political affiliation of its or their authors. This quality is irrelevant and it does not matter whether they are committed or not by persons belonging to the same political party or to political parties or not;

146. The Defendant points out that it was in execution of a rogatory commission that all the persons involved in this case were arrested, including the Applicants;

147. The Defendant considers that the fact that the introductory requisition and the rogatory commission of the investigating judge were issued on the same day does not constitute any violation of the law or of any right of the Applicants, since no time limit is provided between the two acts.

Defendant argues that the same applies to their issuance before, during, or after the Presidential Elections of 18 October 2020, since this results from the normal and regular exercise by these magistrates of their powers;

148. The Defendant recalls that Articles 147(4) and 253(1) of the Guinean Code of Criminal Procedure provide respectively that:

[**Article 147(1) and (4)**]: *"The investigating judge shall, in accordance with the law, carry out all acts of investigation that he deems useful for the revelation of the truth. He shall investigate for both the prosecution and the defence.*

...

If the investigating judge is unable to carry out all the acts of investigation

himself, he may issue a rogatory commission to judicial police officers to have them carry out all necessary acts of investigation under the conditions and subject to the reservations provided for in Articles 253 and 254."

[**Article 253(1)**]: *"The investigating judge may request, by rogatory commission, any investigating judge or any judicial police officer, who shall in this case inform the Public Prosecutor, to carry out the acts of investigation that he deems necessary in the places where each of them is territorially competent."*

149. The Defendant concludes that the Applicants base their claims on general considerations that are, moreover, unfounded.

Respondent argues that the mere enumeration of the rights invoked and the claim that they have been violated cannot in any way characterize or found such a violation, as the evidence to support their claims has not been provided or adduced;

150. The Defendant explains that, contrary to the Plaintiffs' assertions, the Applicants have always exercised their rights excessively, if not abusively, without being troubled and fully enjoy all their rights like any other Guinean citizen without any discrimination, in particular their right to free movement in Guinea, that is to say the right to leave the country and to return, to seek asylum, as well as their right to freedom of opinion or expression...;

151. With regard to their right to take part in the conduct of public affairs of Guinea and to access public office, the Defendant notes that since they do not demonstrate that they have been excluded from such elections while they meet all the necessary conditions, they cannot validly argue that this right has been violated;

152. The Defendant argues that since it is established that the arrest and placement of the Applicants under committal orders were made in execution of a rogatory commission issued by the investigating judge and this, on the requisition of the Public Prosecutor at the Court of First Instance of Dixinn and that a report was drawn up in respect of each of them, the Applicants' allegations regarding the arbitrary nature of their arrest are not based on any evidence, as they were brought before the investigating judge and it is this judicial authority that issued a committal order, after charging them with the acts that it had previously notified to them.

It therefore concludes that the ground based on the violation of the Applicants' right not to be arbitrarily detained should be rejected as unfounded;

COURT ANALYSIS

153. The Court recalls that, according to its own jurisprudence, *"arbitrary detention is any form of deprivation of liberty that occurs without legitimate or reasonable grounds and in violation of the conditions provided for by law.";*

154. The Court notes that, indeed, everyone has the right to liberty and security of person. Consequently, no one may be deprived of his liberty except for reasons and under conditions previously determined by law. It follows that no one may be arrested or detained arbitrarily. This is evident from Article 9(1) of the ICCPR and Article 6 of the ACHPR, which provide respectively that *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one*

shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law" and that "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his liberty except for reasons and under conditions previously determined by law: in particular, no one may be arbitrarily arrested or detained.";

155. The Court recalls that arbitrary detention consists of depriving a person of his liberty in disregard of national law and international standards relating to human rights. It constitutes a violation of the right to liberty.

Arbitrariness refers to the absence of a legal basis and therefore to the illegal and unjustified nature of the arrest and detention;

156. In this regard, the United Nations Working Group on Arbitrary Detention has identified three criteria to determine the arbitrary nature of a detention, namely:

- It is manifestly impossible to invoke any basis whatsoever to justify the deprivation of liberty:
- The deprivation of liberty results from the exercise by the person concerned of the rights proclaimed or the freedoms proclaimed by Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, insofar as the States are parties to the International Covenant on Civil and Political Rights.
- The total or partial non-observance of international standards relating to the right to a fair trial set out in the Universal Declaration of Human Rights and in the relevant international

instruments accepted by the States concerned is of such gravity that the deprivation of liberty takes on an arbitrary character;

157. By way of example, it is appropriate to cite the judgment ECW/CCJ/JUD/05/10 of 8 November 2010 of this Court in the case of Mamadou Tandja v. General Salou Djibo and the State of Niger. Indeed, in this judgment, to retain the arbitrary nature of the detention of the aforementioned, the Court relied on the definition of the Working Group of the United Nations Commission on Human Rights by considering as arbitrary the deprivations of liberty that are contrary to the relevant international standards set out in the Universal Declaration of Human Rights or by the relevant international instruments ratified by the States;

158. The Court notes that, in this case, it appears from the case file that, following the reporting of a series of offenses to its Public Prosecutor's Office by the police in October 2020, the Public Prosecutor at the Court of First Instance of Dixinn (TPID) requested the opening of a judicial investigation against X for acts of storage, transfer, manufacture, possession, and illegal carrying of light and small-caliber weapons, as well as their ammunition and other related materials; murder and complicity in murder; arson; dissemination or provision to others of data likely to disturb public security and order; possession and consumption of drugs; threats of violence or death through a computer system; public disorder through devastation and looting; participation in an insurrectionary movement; attacks on the institutions of the Republic and complicity in attacks on said institutions, acts provided for and punishable under Articles 846 et seq., 282 et seq., and 784 et seq. of the Penal Code;

159. Without delay, the Dean of the Investigating Judges, seized by the introductory requisition of the Public Prosecutor, issued a rogatory commission to the investigating officer of the Central Directorate of Judicial Police, to:

"Search for and apprehend persons suspected of having participated directly or indirectly in the commission of the aforementioned offenses;

Conduct all necessary house searches, seizures, and inventories of seized items in the neighborhoods and surroundings of Kakimbo, Wanindara, Cimenterie, Fofomèrè, and Lambanyi Canadien;

Conduct a neighborhood investigation by collecting statements from all persons wishing to contribute to the revelation of the truth;

Inform the magistrate, in advance, of the application of the provisions of Article 21 of the Code of Criminal Procedure;

Inform the magistrate of any custody measures that may be taken in the execution of this rogatory commission."

This rogatory commission from the office of the Dean of the Investigating Judges of the Court of First Instance of Dixinn, dated 14 October 2020, was transmitted by letter from the Public Prosecutor on 23 October 2020.

Several persons were arrested in the execution of the aforementioned rogatory commission, including Ibrahima Cherif BAH, Abdoulaye BAH, Mamadou Cellou BALDE, Ousmane Gaoual DIALLO, and Etienne SOROPOGUI, the Applicants in this case;

160. The Court therefore finds that, under these circumstances, the Applicants cannot validly argue that their arrest is arbitrary on the grounds that it is devoid of a legal basis, since the facts subject to the criminal prosecution brought against them are provided for and punishable by the aforementioned legal texts;

161. The Court observes that it appears from the case file, in particular from the transcripts of the hearings produced, that during the preliminary investigation, the hearing of each of the Applicants was conducted in the presence of their lawyers;

162. The Court also notes that it was only when the Applicants were brought before the Dean of the Investigating Judges of the Tribunal of First Instance of Dixinn, who had issued the aforementioned rogatory commission, that, following their interrogation at their first appearance, they were placed in pre-trial detention, in execution of the Committal order that was issued against them by this magistrate;

163. The Court observes, in light of all the foregoing, that, contrary to their allegations, the detention of the Applicants is not devoid of a legal basis. However, in accordance with its consistent jurisprudence, the Court considers detention to be arbitrary only when it is devoid of a legal basis. Thus, in Case No. ECW/CCJ/JUD/07/16 of 21 April 2016, AMETEPE KOFFI v. Republic of Togo, the Court held that, in the absence of any legal basis for the arrest and detention of the applicant, they were illegal and arbitrary;

164. Similarly, in the decision in the case of the Institute for Human Rights and Development in Africa and others v. Democratic Republic of Congo, the African Commission on Human and Peoples' Rights indicated that detention without a relevant reason is considered arbitrary and violates the provisions of Article 6 of the African Charter on Human and Peoples' Rights (ACHPR);

165. Indeed, in this case, the African Commission on Human and Peoples' Rights held that the alleged participation of KUNDA MUSEPELO Pierre in the insurrectionary movement

alongside the MRLK did not constitute a relevant reason to justify his detention for three (3) months and that, in so doing, the State of Congo violated Article 6 of the ACHPR;

166. The Court notes that, in this case, the Applicants were arrested and following a committal order issued against them, They were subsequently placed under arrest for various offenses under criminal law. They were thereafter referred to the criminal court by the investigating judge, who considered that there were sufficient grounds to believe that they have committed these offenses;

167. The Court therefore finds that the Defendant has not violated the provisions of Articles 6 of the ACHPR, 9 of the UDHR, and 9(1) of the International Covenant on Civil and Political Rights (ICCPR);

C- *ON THE VIOLATION OF THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT*

168. The Applicants state that they were arrested and tortured in the premises of the Headquarters of the Criminal Investigation Office and that the Defendant violated their fundamental rights. They indicate that it was the police officers in charge of their case, that is to say. State agents, specifically police officers, who arrested them and subjected them to humiliations, with the complicity of their hierarchical superiors;

169. The Applicants further state that the police officers who forced them to hold this slate did so to use the photos as evidence of their guilt in order to punish and intimidate them;

They consider that even if their detention was legitimate, there was no need to subject them to such humiliation once they were in detention;

170. The Plaintiffs argue that, in the presence of acts of moral torture committed by its agents, the State had an obligation to open a prompt, impartial, and effective investigation to bring the perpetrators to justice and also to allow the victims to obtain redress. They argue that, in the present case, no investigation for torture was conducted by the competent authorities, so much so that they also did not obtain redress for the harm suffered;

171. The Defendant retorts to the Applicants' allegations of inhuman and degrading nature of the treatment they claim to have suffered is as fanciful, unreal, and imaginary as it is. It points out to them that no complaint was filed by their lawyers, who nevertheless assisted them during the preliminary investigation. Moreover, it seems reasonably inadmissible to argue that they were tortured and subjected to degrading ill-treatment while they are assisted by their lawyers;

172. The Defendant argues that while it is true that Articles 5 of the ACHPR, 5 of the UDHR, and 7 of the ICCPR prohibit cruel, inhuman, and/or degrading treatment of any person, the European Court of Human Rights, in the judgment Tyrer (ECHR, 25/04/1978), defines inhuman treatment as that which causes severe physical and mental suffering likely to cause acute physical disorders;

173. The Defendant states that, in this case, it is established that the Applicants enjoy good conditions of detention and that they are well treated. It explains that the Applicant Ibrahima Chérif BAH had access to a doctor and was admitted to receive appropriate care in a local hospital;

174. The Defendant avers that by placing the Applicants in pre-trial detention does not in itself constitute inhuman and degrading treatment, since the measure of pre-trial detention is justified by the necessities of the procedure and is within a legal framework.

It therefore requests that the Court reject the Applicants' claims as unfounded;

COURT ANALYSIS

175. The Court observes at the outset that the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity;

176. To this end, the Court recalls that Article 5 of the African Charter on Human and Peoples' Rights provides that "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, in particular slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.";

177. It is essential to note also that Article 7 of the International Covenant on Civil and Political Rights provides that: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ...*";

178. The content of this article led the European Court of Human Rights to recognize that the prohibition of torture has become a peremptory norm of international law. (Soering 7 July 1989, GACEDH).

179. Similarly, a dynamic interpretation of this article, as well as of Article 5 of the African Charter on Human and Peoples' Rights, naturally leads to the imposition on the State of the obligation to take measures to prevent persons under its jurisdiction, in other words the population living on its territory, from being subjected to treatment contrary to the provisions of these articles;

180. With regard to the particular case of detainees, international humanitarian law prohibits torture and other forms of ill-treatment and requires that persons deprived of their liberty be treated in accordance with the rules and principles of international humanitarian law and other international standards;

181. In matters of torture, inhuman, cruel, and degrading treatment, the prohibition is absolute. It applies even in difficult circumstances, including cases of emergency. It is firmly established that corporal punishment is prohibited under international law in general, and under the Convention against Torture in particular;

182. To identify cases of torture, the United Nations Committee against Torture concluded, during the examination of several cases under Article 22 of the Convention against Torture, that the following acts constitute acts of torture:

- The victim was handcuffed to a radiator and beaten with kicks and punches by police officers who insulted him for his ethnic origins. He was also beaten with a heavy metal bar, Sometime later, the police officers untied the victim from the radiator and handcuffed him to a bicycle. Then, they continued to beat him with punches, police batons, and a metal bar. The

blows were so violent that the victim bled from the ears. The victim was detained and beaten for 5 hours and 30 minutes.

- The victim was beaten several times with a baseball bat and a steel cable and was also beaten with punches and kicks all over the body. He lost consciousness several times. Apart from a few brief interruptions, this treatment lasted 13 hours, causing him numerous injuries to the buttocks and left shoulder. The victim spent the next 10 days in bed being treated.

- The victim was ordered to undress, keeping only his underwear, then was tied with handcuffs to a metal bar fixed to the wall and was beaten with a baton for nearly an hour, and during the next three days, he received neither food nor drink, and was not allowed to use the toilet;

183. The Committee also specified in its concluding observations that the following treatments constitute cases of torture:

Keeping the person interrogated tied up, in very painful positions, covering his head with a hood, subjecting him to excessive noise levels for long periods, depriving him of sleep for long periods, uttering threats, including death threats, shaking him violently, and exposing him to freezing air;

184. Administering punches, blows with a truncheon or metal baton, mainly on the head, in the kidney area or on the soles of the feet, causing mutilations and even death in some cases;

185. The Court observes that, in this case, the Applicants allege that they were humiliated by being photographed holding a slate with the word "CONSPIRACY" and that these facts constitute acts of torture;

186. The Court therefore considers that the acts alleged by the Applicants did not cause them very severe pain or acute physical or mental suffering within the meaning of Article 1 of the Convention against Torture;

187. The Court notes that it does not appear from the case file, in particular from the statements of the Applicants, that, in this case, acts of physical or mental violence as described in Article 1 of the Convention against Torture and aimed at obtaining from them confessions concerning the acts with which they are charged were exercised on them;

188. In light of all the foregoing, the Court considers that the suffering that the Applicants claim to have suffered does not constitute acts of torture and cruel, inhuman, or degrading treatment of a nature for which the Defendant could be held responsible under the provisions of the Convention against Torture;

189. The Court therefore finds that the Defendant has not violated the Applicants' right not to be subjected to torture, cruel, inhuman, or degrading treatment;

190. The Court also notes that the Applicants accuse the Defendant for failing to conduct an investigation despite the fact that they were victims of torture;

191. The Defendant considers that the recourse to the investigation provided for in Article 12 of the Convention against Torture cannot apply in the instant case;

192. The Court notes that Article 12 of the Convention against Torture provides that "*Each State Party shall ensure that its competent authorities proceed to a prompt and impartial*

investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.";

193. Certainly, the Court agrees with the United Nations Committee against Torture that Article 13 of the Convention against Torture does not require that a complaint of torture be formally presented in accordance with the procedure provided for in the domestic law of each State and does not require an express declaration of the intention to bring criminal proceedings for the obligation of investigation provided for in Article 12 of the Convention to arise. The mere manifestation of the victim by bringing the facts to the attention of a competent authority in the matter is sufficient to give rise to the obligation on the State to conduct an investigation.

However, the Court considers that, for this to be the case, there must be reasonable grounds to believe that an act of torture has been committed;

194. The Court finds that having been photographed holding a slate with the word "CONSPIRACY" written on it does not constitute reasonable grounds to believe that an act of torture has been committed, so that it cannot be validly reproached to the Defendant for failing to conduct an effective and impartial investigation into acts of torture;

XII *ON THE CLAIM FOR COMPENSATION FOR ALLEGED PREJUDICES SUFFERED*

195. The Applicants claim, as compensation for prejudices suffered, the sum of forty (40) million CFA francs for all causes of prejudices combined for each Applicant.

The Defendant considers that none of the Applicants' human rights have been violated and requests the Court to declare their claim for compensation unfounded and to reject it;

COURT ANALYSIS

196. The Court recalls that its jurisdiction in matters of human rights violations allows it not only to find such violations but also to order their redress, if necessary;

197. The Court specifies that damages are awarded to the victim of harm only to compensate for the harm that he has actually suffered as a result of the fault of the author of the harmful act. It follows that the victim must justify his status as a victim and prove the harm for which he seeks redress;

198. The damages to be awarded to the victim must have as its objective the full reparation of the harm suffered. This is evident from the judgment ECW/CCJ/JUD/11/16 of 17 May 2016 in the case of Farimata MAHAMADOU and 3 others v. Republic of Mali, where the Court first found that *"in this case, not being civil servants or traders, the mother of the orphan (Fatimata KOLA) as well as the two sisters of the deceased (Farimata MAHAMADOU and Baradiangou MAHAMADOU) performed all kinds of chores and servile tasks for 22 years (from February 1993, the date of the death of the deceased Oumar MAHAMADOU, to February 2015, the date of the present application) to ensure their own survival as well as that of the orphan in a locality where the majority of the population derives its income mainly from farm work. This situation seriously affected them and the orphan, due to her young age, received a hypothetical education, due to a lack of means of subsistence and risks of entailing, ad vitam aeternam, the sequels;*

That it results from this statement of facts that the exclusion of the Applicants from the right to succession on the land belonging to the deceased caused them not only material damage but also moral damage" before holding that "in view of the nature of the damage suffered by the Applicants, it is appropriate to declare the State of Mali fully responsible for such damage and

to order its reparation" and to condemn it to pay them the sum of ten million CFA francs each as damages;

199. In this case, since the Court found that the Applicants' right to a fair trial has been violated by the Defendant, it can only declare their claim for payment of damages partially founded;

200. The Court nevertheless considers that the sum of forty (40) million CFA francs claimed by the Applicants as damages is excessive and that it is appropriate to reduce it to just and reasonable proportions by awarding each Applicant the sum of five (5) million CFA francs, taking into account objectively the facts reported and discussed by the parties.

XIII. COSTS

201. Under Article 66(2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if the other party has so requested. The Court notes that, in this case, both the Applicants and the Defendant have so requested. Consequently, the Court holds that, since the Defendant has partially lost, it shall bear the costs;

FOR THESE REASONS

The Court

Sitting in virtual public hearing, in first and last resort and having heard the parties:

On jurisdiction

Declares itself competent to hear the dispute;

On admissibility

Declares the application as admissible;

On the request to submit the case to the expedited procedure

Declares the applicants' application unfounded;

Rejects the request for admission of the case to the expedited procedure;

As to the merits of the case

- Finds that the Defendant has not violated the Applicants' right not to be arbitrarily detained;

- Also finds that the Defendant has not violated the Applicants' right not to be subjected to torture, cruel, inhuman, or degrading treatment;

- Finds, however, that the Defendant has violated the Applicants' right to a fair trial, in particular their right to be tried within a reasonable time and their right to defense;

- Declares the Applicants' claim for payment of damages partially founded;

- Finds, however, that the claim is excessive in its quantum;

- Orders the Defendant to pay each of the Applicants the sum of five (5) million CFA francs as damages;

COSTS:

Orders the defendant to pay the costs.

Thus done and judged on the day, month and year above.

And the following have appended their signatures:

Hon. Judge Ricardo Claúdio Monteiro **GONÇALVES** - Presiding

Hon. Judge Dupe **ATOKI** - Member

Hon. Judge Gberi-bè **OUATTARA** - Judge Rapporteur/Member

ASSISTED BY: Bar. Aboubakar Djibo **DIAKITE** -Registrar