COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

No. 10 DAR ES SALAAM CRESCENT
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA-NIGERIA.
PMB 567 GARKI, ABUJA
TEL: 234-9-78 22 801
Website: www.courtecowas.org

IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Case of

ILLIA MALAM MAMANE SAIDAT v. REPUBLIC OF NIGER

Suit *No.*ECW/CCJ/APP/36/19 – *Judgment No.*ECW/CCJ/JUD /17/2021

JUDGMENT

ABUJA

On June 22nd 2021

SUIT No. ECW/CCJ/APP/36/19

JUDGMENT No. ECW/CCJ/JUD/17/2021

BETWEEN:

ILLIA MALAM MAMANE SAIDAT .... APPLICANT

AND

REPUBLIC OF NIGER .... DEFENDANT

COMPOSITION OF THE COURT PANEL

Hon. Justice Edward Amoako **ASANTE** ....Presiding

Hon. Justice Gberi-Be **OUATARA**.....................Member

Hon. Justice Januária T. S. Moreira **COSTA**... Member/Rapporteur Judge

ASSISTED BY:

Mr. Tony Anene **MAIDOH** .... Chief Registrar

I. REPRESENTATION OF PARTIES

Maître Boudal EFFRED MOULOUL ……. **Counsel for the Applicant**

State Judicial Agency, in the person of its Director General…**Counsel for the Defendant**

II. COURT'S JUDGMENT

1. This is the Court's Judgment read virtually in a public hearing, in accordance with Article 8 (1) of the 2020 Practical Instructions on Electronic Case Management and Virtual Sessions of the Court.

III. DESCRIPTION OF THE PARTIES

2. The Applicant, Illia Malam Mamane Saidat, born on January 19, 1978, in Gargoumsa, Takiéta, residing in Zinder, Niger, is coordinator of the Movement for the Promotion of Responsible Citizenship (MPCR), a civil structure authorized by the State by Order No. 164, dated March 28, 2012, for civic purposes, who has been in preventive custody since April 20, 2018 at Matamey department civil prison, Zinder Region.

3. The Respondent is the Republic of Niger, an ECOWAS Member State and signatory to the African Charter on Human and Peoples' Rights.

IV. INTRODUCTION

4. In the instant case, the Applicant has come to claim the violation of his human rights because, as part of the peaceful protest to demand the repeal of the 2018 Finance Bill adopted by the Respondent because it created new taxes that would "squeeze the people", the Applicant was arrested on 18 April 2018 and remanded in pre-trial detention on charges of committing the offence of conspiracy to security of the State and calling for an insurrectionary movement, allegedly on account of statements made by him on a radio program in which he urged his fellow citizens to participate in the protest.

V. PROCEDURE BEFORE THE COURT

5. The application initiating proceedings, accompanied by ten (10) Exhibits, was lodged at the Registry of this Court on 26 September 2019 and served on the Respondent State on the same date.

6. On October 28, 2019, the Respondent presented its defense, which was served on the Applicant on the same date and the latter made not representation.

7. March 23, 2021 was appointed for the hearing of the parties, who, through their representatives, attended the hearing at which they were heard, formulating their oral observations.

VI. APPLICANT'S CASE

a) Summary of Facts:

8. Since October 2017, date of preparation of the 2018 budget, a civil society collective regularly organizes demonstrations in Niamey and in major cities in the country to demand the repeal of the Finance Bill.

9. The Nigerien Government was accused of having created new taxes that would "squeeze the people" and especially "granted tax benefits of about thirty million euros" to the telephone companies.

10. Despite these protest movements, the Government obtained from the Assembly the adoption of the law in question.

11. After the adoption of this 2018 Finance Bill, the Collective of Civil Society Organizations that includes the **Movement for a Responsible Citizenship (MPCR)**, the **Alternative Citizen Space (AEC)** and the **Crusade,** undertook to organize public and peaceful protests to contest the measures contained in that Bill, to express their disapproval.

12. The movement against that Bill has become national in all the main cities of Niger.

13. Thus, the Collective urged the Nigerien populations to go out on March 25, 2018 to protest "the unpopular Bill".

14. Following the appeal of their national coordinators, in the locality of Zinder, the Collective and the Unions, through the Applicant and his fellow prisoners, made several peaceful protests without any incident.

15. The demonstrations took place periodically as shown in the following chronology:

- The first took place on Sunday, March 11, 2018 (Exhibit No. 3);

- The second occurred on March 25, 2018 (Exhibit No. 4);

- The third took place on Sunday, April 8, 2018 (Exhibit No. 5);

- The fourth took place on April 15, 2018 (Exhibit No. 6).

16. Concerned with the respect of the Bill and regulations, the leaders of this movement, including the Applicant, submitted to the competent municipal authorities a request for authorization to protest peacefully, in accordance with law No. 2004-45 of 06/08/2004, which governs protests on public roads.

17. The Applicant's arrest took place on April 18, 2018, despite the protests, to which they called the people, were peaceful.

18. The Applicant was arrested and imprisoned under inhumane conditions, allegedly for comments made against the authorities, but de facto, for the civic aspect of the protests under his leadership.

19. During the process, all persons detained on this occasion were released, except for the Applicant.

20. The Niamey High Court, in a related and recent case (MP C/Nouhou Arzika, national coordinator MPCR and others), released the accused who were unjustly detained for 4 months, in the name of the freedom to protest.

21. The very nature of the conspiracy charge against State Security presupposes the existence of a group; materially, it is impossible for this action to be committed by the Applicant alone, for to establish the offence it is necessary:

1. A resolution adopted by several people;

2. The realization of a material act;

3. A malicious intention.

22. In the instant case, these elements are not brought together to establish the aforementioned infringement.

23. Despite the totally empty nature of the case, the investigating judge of the second office of the Zinder High Court, confronted by the prosecution chamber of the Zinder Court of Appeal, continues to keep the Applicant away from his family residing in Zinder.

24. To understand the reasons for his detention, alone, among thirty national actors arrested, it suffices to read the transcript of the interview on television from the Niger's Minister of the Interior, a citizen of the same locality and President of the ruling Party who does not want any criticism coming from him (Exhibit No. 7).

25. He has been in detention for twelve (12) months away from his family, from his daily activities to suppress his patriotic convictions and his leadership in the defense of human rights.

26. His detention and imprisonment seriously violate the human rights of which this Court of Justice is the guardian and protector.

b. Pleas in Law:

27. The Applicant cited Articles 2, 3, 6, 7 and 11 of the African Charter on Human and Peoples' Rights (ACHPR) as a basis for his claim, as well as Articles 2, 3 and 9 paragraph 3 and 14 of the International Covenant on Civil and Political Rights, (ICCPR), Article 11 of the Universal Declaration of

Human Rights (UDHR) and Article 6, paragraph 1 of the European Convention on Human Rights Man.

28. He also relied on Article 20 of the Constitution of the Republic, Article 79 paragraph 3 of the Criminal Code, Article 186 paragraph 2 of the Criminal Procedure Code, all in force in the Respondent State.

c) Reliefs Sought by the Applicant:

29. The Applicants sought from the Court the following orders:

With regards to the form:

i. Whether it declares itself competent;

ii. To declare the Applicant's claims admissible.

On the merit:

iii. To declare that the State of Niger has failed to fulfill its obligations:

- By violating his right to the presumption of innocence

- By violating the applicant's right to equality and protection;

- By not respecting the reasonable period of investigation;

- And by disregarding the applicant's freedom of thought, opinion, and assembly.

iv. Rule that the long detention of Mr Saidat Illia, an actor in Nigerien civil society, for his views and his expression of freedom of thought, opinion and

protest in legal norms, is a human rights violation that should immediately be brought to an end;

v. Declare that his long detention causes enormous damage to the manifestation of his civic convictions and condemn the State of Niger for all the above-mentioned violations;

vi. Demand that the State of Niger place Mr. Illia Malam Mamane Saidat in a position to ask for a fair reparation for the damage he suffered.

VII. DEFENDANT'S CASE

a) Summary of Facts:

30. On March 26, 2018, Mr. Illia Malam Mamane SAIDAT, as a civil society actor and taking advantage of the microphone of Anfani Zinder radio, made statements of extreme gravity, urging his fellow citizens of Zinder to come out on the Friday after the JUMA prayer in the likeness of the horrifying events of the January 2015 Friday called "*Charlie protest*" to demonstrate their frustration against the rulers regarding the 2018 Finance Bill, which civil society actors deemed unpopular. (Exhibit 1).

31. That, during the said interview, the Applicant clearly invited citizens to leave massively, as he stated to "*expel these people*" and kept saying "*We also know how to create problems, we will take all necessary steps to land these malicious individuals (with reference to the authorities), we urge everyone to stand up because the slave is when someone submits to the illegal ones*". (Exhibit 1).

32. Considering that such allegations leave no doubt as to the Applicant's willingness to undermine the authority of the State, to lead citizens to attack the bases of the State and to no longer obey the regime in force.

33. And that such statements amount to violations of conspiracy to the security of the State and call for an insurrectionary movement that tends to overthrow a constitutional regime, in accordance with the provisions of the Criminal Code applicable in Niger.

34. The Applicant was arrested and jailed on April 20, 2018, accused of conspiracy against security of the State and calling for an insurrectionary movement, facts which are sanctioned and condemned by Articles 78, 79 and 89 of the Criminal Code applicable in Niger.

35. That the Applicant, through his lawyer, Maître Boudal Effred Mouloul, submitted an application for acquittal and provisional release to the investigating judge of the 2nd Office of the Zinder High Court, which, on June 12, 2018, by reasoned decision, the judge dismissed.

36. That, against this decision, the Applicant lodged an appeal before the Accusation Chamber of the Zinder Court of Appeal, which, by judgment No. 180 of November 21, 2018, confirmed the decision to deny provisional release. (Exhibit 1).

37. That instead of appealing against judgment No. 180 of November 21, 2018 of the Prosecution Chamber of the Zinder Court of Appeal, Mr. Illia Malam Mamane SAIDAT filed on September 26, 2019 an application to the ECOWAS Court of Justice for alleged violations of his human rights by the State of Niger.

b. Pleas in Law:

38. The Respondent based its allegation on Articles 8 and 7 of the Constitution of the Republic, Articles 78, 79 and 89 of the Criminal Code, Articles 131, 132 and 168 of the Criminal Procedure Code, all in force in the State of Niger.

c. Reliefs Sought:

39. The Respondent submitted that the Court should:

With regards to the form:

i. Declare the defense admissible;

ii. Rule on the admissibility of the petition.

On the merit:

iii. Declare the petition unfounded;

iv. Order the Applicant to pay the expenses.

VIII – JURISDICTION

40. In the instant case, the Applicant's allegations are based on the matter of violation of his human rights contrary to the relevant provisions of the African Charter on Human and Peoples' Rights and of the other international instruments for the protection of human rights, namely the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, as relied on.

41. In this sense, the action falls within the scope of the jurisdiction conferred on this Court, under the terms of Article 9 (4) of the Protocol on the Court of Justice of the Community, ECOWAS, to investigate cases of

human rights violations that occur in any member state. (See also the cases *SERAP v. FEDERAL REPUBLIC OF NIGERIA AND 4 OTHERS*, Judgment No. ECW/CCJ/JUD/16/14, (§72) and *KARIM MEISSA WADE v. RÉPUBLIQUE DU SENEGAL,* Judgment No. ECW/CCJ/JUD/19/13, §72)

IX. ADMISSIBILITY

42. The admissibility of the application initiating proceedings is governed by the provisions of Article 10 (d), of Protocol A/P1/7/91, Relating to the Court, as amended by Additional Protocol A/SP.1/01/05, mentioned above, which establishes that:

"Can consult the Court (...) d) Anyone who is a victim of human rights violations. The request submitted for this purpose:

i) Must not be anonymous;

ii) Will only be submitted to the Community Court of Justice if it has not been submitted to another Competent International Court (...)"

43. Therefore, the Applicant having identified himself as a victim of human rights violations, the Court finds that the claim is neither manifestly unfounded under the aforementioned article nor inadmissible on any other grounds.

44. Accordingly, the action should be declared admissible.

X. MERITS

45. The Court goes on to assess each of the human rights allegedly violated by the Respondent State, although not following necessarily the order in which it was submitted by the Applicant but taking into consideration among the issues that the Applicant has submitted to the Court's decision, the most relevant in view of the alleged facts.

a. The allegation of violation of Article 11 of the Charter:

46. The Applicant claimed that following a peaceful protest, in which the Respondent was required to repeal the 2018 Finance Bill, which created new taxes that would "*squeeze the people*", he was arrested on April 18, 2018 and imprisoned under inhumane conditions, allegedly for comments made against the authorities.

47. He further claimed that the protests took place between 11 and 25 March and 8 and 15 April 2018 (Exhibits 3, 4 and 5);

48. He thus submitted that the State of Niger violated his right to assemble freely, to think and to express his opinion, without valid reason.

49. On its turn and in its defense, the Respondent alleged that on 26 March 2018, the Applicant, as a civil society actor and taking advantage of the microphone of Anfani Zinder radio, made statements of extreme gravity, urging his fellow citizens of Zinder to come out on the Friday after the JUMA prayer in the likeness of the horrifying events of the Friday of January 2015, called the "Charlie Protest", to demonstrate their frustration against the rulers regarding the 2018 Finance Bill which the civil society actors considered unpopular. (Exhibit 1)

50. That, during this interview, the Applicant clearly invited citizens to leave massively, as he stated to "*expel these people*" and kept saying "*We also know how to create problems, we will take all necessary steps to land these malicious individuals (with reference to the authorities), we urge everyone to stand up because the slave is when someone submits to the illegal ones*". (Exhibit 1)

51. Considering that such allegations leave no doubt as to the Applicant's willingness to undermine the authority of the State, to pull citizens to attack the bases of the State and to no longer obey the regime in force.

52. That such statements amount to violations of conspiracy to state security and call for an insurrectionary movement that tends to overthrow a constitutional regime, in accordance with the provisions of the Criminal Code applicable in Niger.

53. That it was so, that the Applicant was arrested and imprisoned on April 20, 2018, accused of conspiracy against State security and call for an insurrectionary movement, facts sanctioned and condemned by Articles 78, 79 and 89 of the Criminal Code applicable in Niger.

54. The Respondent did not comment on the alleged violation of the right to freedom of assembly.]

##

55. The right to freedom of assembly is guaranteed by Article 11 of the African Charter, which provides as follows:

"Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the Safety, heath, ethics and rights and freedom of others."

56. This right is also guaranteed by Articles 20 (1) of the Universal Declaration of Human Rights, 21 of the Covenant and 11 of the European Convention on Human Rights.

57. The right to freedom of peaceful assembly is a fundamental human right that allows individuals to express themselves collectively and participate in the formation of their societies. This right protects people's ability to exercise personal autonomy in solidarity with others. Together with other related rights, it also forms the basis of a participatory governance system based on Democracy, Human Rights, the Rule Of Law and pluralism. (See *Human Rights Committee, General Comment No. 37 § 1*).

58. This Committee further noted that "*Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to stablish the extent of support for or opposition to those ideas and goals* (…) (See §1) and even though "*... is, moreover, a valuable tool that can and has been used to recognize and realize a wide range of other rights ....*" *(See §2).*

59. Thus, this right protects the non-violent gathering of people with common specific and expressive purposes. It constitutes an individual right that is exercised collectively. (See *Human Rights Committee, General Comment §4).*

60. As such, his right covers both private assemblies and assemblies on public roads, as well as static assemblies and public processions; moreover, it can be exercised by individuals and by the organizers of assemblies. (See European Court of Human Rights, in the case *KUDREVIČIUS AND OTHERS v. LITHUANIA,* Application No. 37553/05, 15 October 2015, § 91).

61. Still, the said Court, in *Research Division, Article 11, The conduct of public assemblies in the Court's case-law*, p. 5 §4, reiterated that "*Freedom of peaceful assembly under Article 11 is broadly interpreted to include the organization of, and participation in, marches or processions(…)static assemblies or sit-ins (…) and both public and private events, whether formal or informal. (...) In Rassemblement jurassien et Unité jurassienne v. Switzerland (N°. 8191/78, Commission decision of 10 October 1979, DR 17, p. 93), the Commission noted that Article 11 protects both "private meetings and meetings in public thoroughfares". (...) Article 11 will cover any gathering of persons for* ***a common economic or political purpose, (…)***."

62. With the same understanding, the European Court ruled that "*Assembly is defined, in particular, by a common purpose of its participants and is to be distinguished from a random agglomeration of individuals each pursuing their own cause, such as a queue to enter a public building…*" (*See* Guide on Article 11 of the European Convention on Human Rights Freedom of Assembly and Association, updated on 31 December 2020, p. 8 §13).

63. And, in this same vein, the African Commission on Human and Peoples' Rights underlined that "*The right to freedom of association applies to "any group of individual or legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.*" (*See* Report of the Study Group on Freedom of Association & Assembly in Africa p.28, §2).

64. The Human Rights Committee also wrote in this regard, that "*Participating in an "assembly" entails organizing or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas. The gathering can also*

be intended to assert or affirm group solidarity or identity. Assemblies may, in addition to having such aims, serves other goals, such as an entertainment, cultural, religious or commercial objective, and still be protected under article 21." (See General Comment No. 37, §12).

65. The aforementioned case *KUDREVIČIUS AND OTHERS v. LITHUANIA*, §92 also held that "*Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organizers and participants have violent intentions (...) The guarantees of Article 11 therefore apply to all gatherings except those where the organizers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (..)* "

66. Thus, States must not only safeguard the right to peaceful assembly, but also refrain from applying unjustified indirect restrictions to that right, as States must protect individuals against arbitrary interference by public authorities in the exercise of protected rights (negative obligations).

67. In addition, States have positive obligations to ensure the effective enjoyment of such rights, as the authorities have a duty to take appropriate measures in relation to legal protests to guarantee their peaceful conduct and the safety of citizens. (See European Court, in the case *DJAVIT AN v. TURKEY*, Application No. 20652/92, 20 February 2003, p.19 §57).

68. It should be noted, however, that although freedom of assembly is a fundamental right that should, as a rule, be enjoyed without restriction, it is not an absolute right, as international human rights law allows restrictions on the rights to freedom of association and assembly. (*See African Commission on Human and Peoples' Rights, in Report of the Study Group on Freedom of Association & Assembly in Africa, p. 20§4)*

69. International jurisprudence has understood that the term "restrictions" should be interpreted as including both measures taken before or during the public assembly, as well as those - such as punitive measures - taken after the assembly (See European Court in the case, *MAKHMUDOV v. RUSSIA*, Application No. 35082/04, 26 July 2007, p. 11§ 55).

70. Restrictions should be the exception, not the norm, and should not undermine the essence of the law. (See *Human Rights Committee, General Comment No. 27 (1999)* on freedom of movement §13).

71. The European Court referred to in the aforementioned case, *KUDREVIČIUS AND OTHERS v. LITHUANIA*, §100 that "*It reiterates that the interference does not need to amount to an outright ban, legal or de facto, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 §2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards*."

72. Thus, restrictions on the right to freedom of assembly based on at least one of the grounds provided for and listed in Articles 11 of the African Charter and 21 of the ICCPR are permitted provided that they are (1) provided for by law; (2) serve a legitimate purpose; and (3) and are necessary in a democratic society. (See the aforementioned Articles 11 of the Charter and 21 of the Covenant)

73. However, the burden is on the authorities to justify any restrictions (See *GRYB v. BELARUS* (CCPR/C/103/D/1316/2004), §13.4.) Since those must be able to demonstrate that the restrictions meet the requirements of legality, necessity and are proportional. Whenever this burden is not met, this right is violated. (See *Human Rights Committee, General Comment No. 37, §36; CHEBOTAREVA v. RUSSIAN FEDERATION*

(CCPR/C/104/D/1866/2009), §9.3 and *African Commission, MALAWI AFRICAN ASSOCIATON AND OTHERS v. MAURITANIA, Comm 54/91, 61/91, 98/93, 164-196/97 and 210/98 (2000), §111*)

74. The imposition of restrictions on a given assembly should be a last resort, insofar as they should be considered when a less restrictive response cannot achieve the objective pursued by the authorities in safeguarding other relevant rights and freedoms and public order (ordre public).

75. In other words, when the imposition of restrictions is considered necessary, the authorities should, in the first place, seek to apply less intrusive measures.

76. It is necessary to analyze each of the requirements regarding restrictions on the right to freedom of assembly:

a) The principle of legality

77. To satisfy the legality requirement, any restrictions must be imposed through law or administrative decisions based on law.

78. This law must be of general application, it must have been in force before the act in question (principle of non-retroactivity), it must be accessible and formulated in clear language and of sufficient precision to allow people to regulate their conduct accordingly and it cannot grant unrestricted or comprehensive discretion to those responsible for its application. (See the aforementioned *Report of the Study Group on Freedom of Association & Assembly in Africa* p. 20 §5; The European Court of Human Rights, *HASHMAN AND HARRUP v. THE UNITED KINGDOM*, application No. 25594/94, 25 November 1999, §31, and *GILLAN AND QUINTON v. THE UNITED KINGDOM*, application No. 4158/05, 12

January 2010, §76 and *Human Rights Committee, General Comment* nº 37 §39).

79. The African Commission also emphasized this requirement, namely, in the cases *MEDIA RIGHTS AGENDA* v. *NIGERIA*, Comm. No. 224/98 (2000), §74-75; *INTERIGHTS AND OTHERS v. MAURITANIA*, Comm. No. 242/2001 (2004), §77; PUROHIT AND ANOTHER v. THE GAMBIA, Comm No. 241/2001 (2003), § 64.

b) The legitimate reason

80. Any restrictions imposed by law must be for a legitimate purpose. International human rights law recognizes restrictions based on the interests of *national security, public order, public or moral health, or the rights and freedoms of others*.

81. The ground of restriction allowed is that of *national security interest*, as is the case relied on by the Respondent, can serve as a basis for restrictions when they are necessary to preserve the State's ability to protect the nation's existence, its territorial integrity or political independence against a credible threat or use of force.

82. As stated in the "*Syracuse Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* (E/CN.4/1985/4, annex), *29 to 32*:

29. "National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population."

83. The Charter, in its Article 11, refers to "*national security interests, the safety of others, health, morals or people's rights and freedoms*."

84. The broad language of these categories should not be confused with broad authorization; in each instance of potential limitation, the state must clearly define the precise purpose envisaged, as well as show that the measure in question is necessary and proportional. (See the aforementioned *Report of the Study Group on Freedom of Association & Assembly in Africa*, p. 21 §6)

85. Regarding this requirement, see also the European Court, in the case of CISSE v. FRANCE, Application no. 51346/99, 9 April 2002, §§ 44-46; African Commission, in the case *INTERIGHTS AND OTHERS v. MAURITANIA*, Comm No 242/2001 (2004), § 77-79)

c) Necessity and proportionality in a democratic society

86. As the African Commission noted that: "*In addition to complying with the principle of legality, and being aimed at a legitimate purpose, any limitations on rights must be necessary means of securing those ends within*

a democratic society." (See the aforementioned *Report of the Study Group on Freedom of Association & Assembly in Africa*, P. 22 §8)

87. This understanding goes in the direction of what sustained the *Human Rights Committee in its General Comment No. 37*, when writing that any restriction must be necessary in a democratic society, rule of law, political pluralism and human rights. Such restrictions must be the appropriate response to an urgent social need, in relation to one of the permitted grounds and listed in article 11 of the Charter and 21 of the ICCPR.

88. Such restrictions must also be the least intrusive of the measures with a relevant protective function and *proportional* in the sense that they require a consideration of the harmful impact of the interference in the exercise of the right against the resulting benefit for one of the reasons for the interference. (§40)

89. It should be noted that the principle of proportionality has to be respected not only in the law that defines the restrictions, but also by the administrative and judicial authorities in law enforcement (See Human Rights Committee, General Comment No. 27, §15; General Comment No. 34, §34)

90. Regarding this requirement, see also the European Court, *MAKHMUDOV v. RUSSIA*, Application No. 35082/04, 26 July 2007, §65-73; African Commission, *MALAWI AFRICAN ASSOCIATION AND OTHERS v. MAURITANIA*, Comm N°s. 54/91, 61/91, 98/93, 164-196/97 and 210/98 (2000), §111.

91. ***Based on the principles set out above, it is up to the Court, in the instant case, to ascertain whether there was an interference by the***

Respondent in the exercise of the right to freedom of assembly that the Applicant enjoys and if such interference is justified.

92. It should be recalled that of the facts claimed by the parties, the Respondent admitted that the Respondent was arrested and imprisoned on April 20, 2018 as a result of statements which he made on March 26, 2018, as a civil society actor and taking advantage of the Anfani Zinder radio microphone, urging his fellow Zinder citizens to go out on Friday after the JUMA prayer in the likeness of the horrifying events of Friday, January 2015, called "*Charlie Protest*", to demonstrate their frustration against government officials over the 2018 finance Bill that civil society actors considered unpopular. That on that occasion the Applicant clearly invited the citizens to go out massively, as he stated, to "*expel these people*" and kept saying "*We also know how to create problems, we will take all necessary steps to land these malicious individuals (with reference to the authorities), we urge everyone to stand up because the slave is when someone submits to the illegal ones*".

93. That such statements were considered as state security conspiracy violations and call for an insurrectionary movement that tends to overthrow a constitutional regime, in accordance with the provisions of Articles 78, 79 and 89 of the Criminal Code applicable in Niger and which the Applicant was accused of.

94. That, therefore, it is in view of the gravity of these declarations that amount to infraction against criminal law and, better, to avoid the repetition of the infraction that the Investigating Judge of the 2nd Office of the Zinder High Court issued an arrest warrant against the Applicant, in accordance with Articles 131 and 132 (1) of the Criminal Procedure Code applicable in Niger on pre-trial detention.

95. That in this sequence the Applicant was arrested and imprisoned on April 20, 2018, accused of conspiracy against state security and calling for an insurrectionary movement, facts sanctioned and condemned by Articles 78, 79 and 89 of the Criminal Code applicable in Niger.

96. That the Applicant submitted a petition for acquittal and provisional release to the Investigating Judge of the 2nd Office of the Zinder High Court, which was dismissed on June 12, 2018.

97. That, against that decision, he filed an appeal before the Prosecution Chamber of Zinder Court of Appeal, which confirmed the decision to deny provisional release. (Exhibit 1)

98. In view of these facts, the Court considers that the Applicant's arrest occurred on April 18, 2018, that is, three days after the last of the protests organized by the Applicant, the latter taking place on April 15, 2018, motivated for alleged pronouncements made on March 26, 2018, by the Applicant, as an actor in civil society and organizer of peaceful assemblies, constitutes interference in the exercise of the right to freedom of assembly that the Applicant enjoys, guaranteed by Articles 11 of the Charter and 21 of the ICCPR.

99. **However, it is necessary to verify whether such interference is justified, and the Respondent is responsible for the burden of proving such.**

100. Therefore, it is important to highlight that the Court, when evaluating the evidence in the cases submitted to it, is usually guided by the *affirmativi, non neganti, incumbit probatio principle* (the burden of proof is on whoever affirms and not who denies it). (See the case, *FEMI FALANA AND ORS v. THE REPUBLIC OF BENIN AND ORS*, Judgment No.

ECW/CCJ/JUD/02/12, in LRCCJ (2012) pgs. 1 to 18, the European Court, in the case *MAKHMUDOV v. RUSSIA*, Application no. 35082/04, 26 July 2007, &68).

101. The evidence may result from the coexistence of sufficiently strong, clear, and consistent inferences or from similar factual assumptions that are not refuted. In certain cases, only the Respondent State has access to information capable of corroborating or refuting specific allegations.

102. The failure of a respondent State to provide such information without a satisfactory explanation may give rise to inferences as to the merits of the Applicant's allegations. *MAKHMUDOV v. RUSSIA* §68).

103. On the other hand, it is for the Court, in examining the interference found, to ascertain whether the respondent State, exercised its discretion reasonably, carefully and in good faith and further, to examine the interference complained of in the light of the case as a whole and to determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons put forward by the national authorities to justify it were "relevant and adequate". In doing so, the Court must ensure that national authorities have applied standards that were in line with the principles enshrined in Article 11 of the African Charter and 21 of the ICCPR and, in addition, that they based their decisions on an acceptable assessment of the relevant facts. (See the aforementioned case, *MAKHMUDOV v. RUSSIA*, §65)

104. The Respondent's allegations in the instant case were limited to the statement that the Applicant's arrest and consequent preventive detention (Article 131 of the Criminal Procedure Code) was based on Articles 78, 79 and 89 of the Criminal Code, which provides, respectively, the criminal

offences of conspiracy against the security of the State and of calling for an insurrectionary movement.

105. According to the aforementioned Criminal Code, the following is established:

"SECTION III. – Des attentats, complots et autres infractions contre l'autorité de l'Etat et l'intégrité du territoire national.

Art.78*: L'attentat dont le but aura été soit de détruire ou de changer le régime constitutionnel, soit d'exciter les citoyens ou habitants à s'armer contre l'autorité de l'Etat ou à s'armer les uns contre les autres, soit à porter atteinte à l'intégrité du territoire national sera puni de l'emprisonnement à vie.*

L'exécution ou la tentative constitueront seules l'attentat.

Art. 79*: Le complot ayant pour but les crimes mentionnés à l'article 78, s'il a été suivi d'un acte commis ou commencé pour en préparer l'exécution, sera puni d'un emprisonnement de dix à vingt ans.*

(...)

SECTION V. – Des crimes commis par la participation à un mouvement insurrectionnel

Art. 89 *: Seront punis d'un emprisonnement de dix à vingt ans les individus qui, dans un mouvement insurrectionnel :*

1) auront fait ou aidé à faire des barricades, des retranchements ou tous autres travaux ayant pour objet d'entraver ou d'arrêter l'exercice de la force publique;

2) auront empêché, à l'aide de violences ou de menaces, la convocation ou la réunion de la force publique, ou qui auront provoqué ou facilité le

rassemblement des insurgés, soit par la distribution d'ordres ou de proclamations, soit par le port de drapeaux ou autres signes de ralliement, soit par tout autre moyen d'appel;

3) auront, pour faire attaque ou résistance envers la force publique, envahi ou occupé des édifices, postes et autres établissements publics, des maisons habitées ou non habitées. La peine sera la même à l'égard du propriétaire ou du locataire qui, connaissant le but des insurgés, leur aura procuré sans contrainte l'entrée desdites maisons."

106. The Criminal Procedure Code in force in the Respondent also establishes that:

"SECTION VII - De la détention préventive

Art. 131. *-(Loi n° 2003-26 du 13 juin 2003). La détention provisoire est une mesure exceptionnelle. Elle ne peut être ordonnée ou maintenue que dans les conditions définies ci après:*

1. Lorsque la détention préventive de l'inculpé est unique moyen de conserver les preuves ou les indices matériels ou d'empêcher soit une pression sur les témoins ou les victimes, soit une concertation frauduleuse entre les inculpés.

2. Lorsque cette détention est l'unique moyen pour protéger l'inculpé, de garantir son maintien à la disposition de la justice, de mettre fin à l'infraction ou prévenir son renouvellement.

3. Lorsque l'infraction, en raison de sa gravité, des circonstances de sa commission ou de l'importance du préjudice qu'elle a causé, a provoqué un trouble exceptionnel et persistant à l'ordre public, auquel la détention est l'unique moyen de mettre fin.

L'inculpé peut se faire assister par un avocat.

Lorsqu'elle est prescrite, par ordonnance motivée, les règles ci-après doivent être observées.

Art 131-1 bis. *- (Loi n° 2003-26 du 13 juin 2003). La détention provisoire ne peut excéder une durée raisonnable, au regard de la gravité des faits reprochés à l'inculpé et de la complexité des investigations nécessaires à la manifestation de la vérité (...)"*

107. The decisive question that must be considered is whether the measure taken by the Defendant State based on the articles listed above is justified under the terms of Articles 11 of the Charter and 21 of the ICCPR, and it is up to the Defendant to provide such proof.

108. The Court notes that the Respondent relied on the need to protect national security against the threat posed by the Applicant's statements.

109. The Respondent, by relying on the national security interest to restrict the Applicant's right to freedom of assembly, must demonstrate that the Applicant has made such statements, the precise nature of the threat and the specific risks resulting from it. (See Human Rights Committee, Communication No. 1119/2002, *LEE v. THE REPUBLIC OF KOREA*, 20 July 2005, §7.3).

110. It does not suffice for the State to refer in a general way to the national security interest. It should be noted that national, political or government interests are not synonymous with national security or public policy (ordre public).

111. Furthermore, the Respondent must demonstrate that the restriction of the Applicant's right is in fact necessary to avoid a real danger, not just a hypothetical danger to national security or of a democratic order and that less intrusive measures would be insufficient to achieve such purpose.

112. On the other hand, as the Human Rights Committee has stated, the rules applicable to freedom of expression must be applied when referring to

any expressive element of a peaceful assembly. And restrictions on peaceful assemblies cannot be used explicitly or implicitly to stifle the expression of political opposition to a government, challenges to authority, including calls for democratic changes in government, constitution or political system, or the pursuit of self-determination. They must not be used to prohibit insults to the honor and reputation of state officials or agencies" (see §49)

113. In other words, it was up to the Respondent to demonstrate that by detaining the Applicant, placing him in pre-trial detention and preventing him from participating in other protests, was the last resort and that it acted in such a way because the response to a less restrictive measure would not achieve the objective pursued by the authorities to safeguard national security interests or other relevant and public order rights and freedoms.

114. Therefore, the Respondent must provide evidence that it first tried to impose less onerous restrictions.

115. It should be noted that restrictions on the right to freedom of assembly, based on national security interests, should be imposed only to protect the existence of the nation or its territorial integrity or political independence against violence or the tangible threat of force. Once again it was up to the Respondent to demonstrate such facts.

116. However, in the instant case, the Defendant has neither alleged nor proved any facts capable of constituting the grounds referred to above and underlying the alleged grounds justifying the restriction imposed on the Applicant.

117. In general terms, it pleaded that the Applicant's statements constituted a threat to the security of the State, stating that, in view of the seriousness of such declarations which amount to infraction against the criminal law and, better, to avoid the repetition of the infraction that the Investigating Judge of the 2nd Office of the High Court of Zinder issued an arrest warrant against the Applicant, in accordance with Articles 131 and 132 (1) of the Code of

Criminal Procedure applicable in Niger in respect of pre-trial detention, however, failing to demonstrate the extent to which such statements called into question the interest of national security.

118. However, the aforementioned Article 131 of the Code of Criminal Procedure states that the application of pre-trial detention is an exceptional measure and should only be applied when the situations provided for in it are verified.

119. The Respondent did not claim nor succeed in proving the requirements set forth in that article when applying preventive detention to the Applicant, as such ground does not appear in Judgment No. 180 of November 21, 2018, handed down by the Prosecution Chamber of the Court of Appeal of Zinder which confirmed the decision to deny provisional release.

120. The Court also notes that the Respondent and his courts have not demonstrated that the Applicant's detention and the application of pre-trial detention were necessary to avoid a real danger to the national security of the Republic of Niger.

121. Interference with the right to freedom of assembly, involving, inter alia, the arrest of participants can only be justified by stated and specific substantive reasons, such as the risks provided for in the law and only after the participants have been given sufficient opportunities to express their views. (See European Court, *Guide on Article 11 of the European Convention on Human Rights Freedom of assembly and association,* 31 December 2020 §82*).*

122. Such a situation was not found in the instant case, as the Respondent at no time claimed that the Applicant had the opportunity to express his views before he was arrested and preventively arrested.

123. And even if it were considered that the Respondent succeeded in proving the statements that it imputes to the Applicant, they cannot,

automatically and by themselves, justify the restriction of the Applicant's right to freedom of assembly.

124. Demanding political change in speeches and protests does not automatically mean a threat to the country's territorial integrity and national security, for in a democratic society based on the rule of law, political ideas that challenge the existing order and whose realization is advocated by peaceful means must be given an adequate opportunity for expression through the exercise of the right of assembly. Thus, national security cannot be claimed to justify limitations to avoid merely local or relatively isolated threats to law and order.

125. Furthermore, national security should not be used as an excuse to impose vague or arbitrary limitations and should only be claimed in combination with adequate safeguards and effective solutions against abuse.

126. On the other hand, the systematic violation of human rights, including the right to freedom of assembly, undermines real national security and can jeopardize international peace and security. A state responsible for such violations cannot claim national security as a justification for suppressing political dissent or opposition of any kind or for perpetrating repressive practices against its population.

127. Consequently, the Respondent State's failure to produce any evidence capable of substantiating the statement of "*need to protect national security against the threat posed by the Applicant's statements*" as a justification for the Applicant's detention and pre-trial detention, leads the Court to conclude that the national authorities acted arbitrarily.

128. The Court therefore considers that there was no justification for interfering in the exercise of the Applicant's right to freedom of assembly.

129. In this sense, the Court finds that the Respondent violated Articles 11 of the Charter and 21 of the ICCPR.

b. The alleged violation of the right to freedom of expression

130. The right to freedom of expression is guaranteed by Article 9 of the African Charter.

131. The same right is enshrined in Articles 19 of the Universal Declaration of Human Rights and 19 of the ICCPR.

132. This Court underlined in the case *FEDERATION OF AFRICAN JOURNALISTS AND OTHERS v. REPUBLIC OF THE GAMBIA*, Judgment No. ECW/CCJ/JUD/04/18, of February 13, 2018, p. 32, that: "*Freedom of expression is a fundamental human right and full enjoyment of this right is central to achieving individual freedoms and to developing democracy. It is not only the cornerstone of democracy, but indispensable to thriving civil society.*"(See also the African Court in the case, *INGABIRE VICTOIRE UMUHOZA v. REPUBLIC OF RWANDA*, Application No. 0003/2014, of November 24, 2017, §132 and 133)

133. The right to freedom of expression includes the freedom to have opinions and to receive and transmit information and ideas without interference from public authorities and regardless of borders.

134. Given the expressive nature of many protests and the role they play in protecting opinion, international jurisprudence has recognized that the right to freedom of peaceful assembly and the right to freedom of expression are, in practice, often closely linked, with the protection of personal opinions is one of the goals of freedom of peaceful assembly.

135. In this sense, the European Court, in the case of *ÉVA MOLNÁR v. HUNGARY*, Application No. 10346/05, October 7, 2008, §42, held that: "*(...) the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest. The protection of the expression of*

personal opinions, secured by Article 10, is one of the objectives of the freedom of peaceful assembly enshrined in Article 11."

136. Thus, certain restrictions or prohibitions on the right to freedom of assembly can also automatically affect the right of individuals or groups to express their opinion on a given subject. In numerous cases, international courts have assessed the right to freedom of peaceful assembly in the light of the right to freedom of expression of the organizers and participants of the assembly.

137. In the instant case, in view of the above finding that the Applicant's detention was carried out because of protests organized by him and for allegedly making the aforementioned statements that the Respondent attributes to him, within the scope of a radio intervention, there is no doubt that the Respondent, for the same reasons explained above, also violated the Applicant's right to freedom of expression.

138. Accordingly, the Court finds that the Respondent violated Articles 9 of the African Charter, 19 of the Universal Declaration of Human Rights and 19 of the ICCPR.

c. Alleged violation of Article 6 of the Charter:

139. To support the plea of violation of this right to liberty, guaranteed by Article 6 of the African Charter, the Applicant alleges that he was effectively detained and preventively arrested on account of his opinions and his expression of freedom of thought, opinion and protest, since the criminal offences attributed to him, that of conspiracy against the State and that of urging a insurrectionary movement, are fallacious and unproven.

140. That the Applicant has seen all his applications for provisional release dismissed for a materially impossible criminal offence since he alone is

being accused of conspiracy against state security, in violation of Article 79, paragraph 3 of the Nigerien Criminal Code, which provides that such offense can only be committed by two or more people.

141. He submitted that his detention can only constitute an arbitrary detention.

142. On its part, the Defendant came to admit that the Applicant was accused of conspiracy against the security of the State and call for an insurrectionary movement sanctioned by Articles 78, 79 and 89 of the Criminal Code applicable in Niger.

143. That it was in view of the seriousness of the Applicant's statements constituting a breach of the Criminal Law and to avoid a repeat of the offense that the Investigating Judge of the 2nd Office of the High Court of Zinder issued an arrest warrant against the Applicant in accordance with the Articles 131 and 132 of the Criminal Procedure Code, applicable in Niger with regards to pre-trial detention.

144. It also maintained that, under the terms of the aforementioned articles, pre-trial detention cannot exceed 30 months. That the Applicant was arrested on April 20, 2018 to the present date and that such detention cannot be described as illegal or arbitrary.

✓

145. As provided in Article 6 of the African Charter: "*Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.*"

146. This right is equally enshrined in the Universal Declaration of Human Rights UDHR (Arts. 3 and 9) and in the International Covenant on Civil and Political Rights (ICCPR) (Art. 9).

147. Similarly, Article 7 of the American Convention on Human Rights and Article 5 of the European Convention on Human Rights guarantee this same

right to liberty and security of individuals, the latter being the only Convention that specifically lists in paragraphs (a) to (f) the grounds that can legally justify the deprivation of liberty.

148. According to the above-mentioned human rights protection instruments, the deprivation of liberty must, in all cases, occur *for reasons and under conditions previously determined by law (i.e. the domestic or national law of the States Parties), i.e. in compliance with the principle of legality.*

149. In the same vein, the Human Rights Committee noted that "*no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. (...). Deprivation of liberty without such legal authorization is unlawful.*" (See General *Commentary N°* 35 §22).

150. In this regard, the Court rendered in the Judgment ECW/CCJ/JUD/05/15, in the case of BENSON OLUA OKOMBA V. REPUBLIQUE DU BENIN, that: "The above mentioned human rights treaties, provides that deprivation of liberty within a State must in all cases be carried out in accordance with the law." (Pag.16) (See yet the JUDGMENT *ECW/CCJ/JUD/03/08*, rendered in the case of *CHIEF EBRIMAH MANNEH V. THE REPUBLIC OF GAMBIA, (§15), CASE No. ECW/CCJ/APP/04/07 - IN LR 2004-2009, PAG.181).*

151. Also, this Court stated that "*une détention est dite arbitraire lorqu'elle ne repose sur aucune base légale.*" (§91.). See *HADJITOU MANI KORAOU v. REPUBLIC OF NIGER, Judgment ECW/CCJ/JUD/06/08*,– LR 2004-2009 p. 217-244.

152. Also, in the Judgment ECW/CCJ/JUD/13/12 Delivered in the *CASE BADINI SALFO V. REPUBLIQUE DU BURKINA FASO*, this Court defined arbitrary arrest as: "*any form of curtailment of individual liberty that occurs without a legitimate or reasonable ground, and is in violation of the conditions set out under the law.*"

153. The European Court of Human Rights also stressed that "*... on the question whether detention is 'lawful', including whether it complies with "a procedure prescribed by law" within the meaning of article 5§1, the Convention refers back essentially to national law, including rules of public International law applicable in the state concerned*" - See *TONIOLO V. SAN MARINO AND ITALY* – Application No. 44853/10 of 26 June 2012 §44.

154. The notion of arbitrariness also covers deprivation of liberty contrary to standards of reasonableness, that is, whether it is "*just, necessary, proportionate and equitable as opposed to unjust, absurd and arbitrary*". (see African Commission, Communication No. 458/1991, in the case, *MUKONG v. CAMEROON* and the *Human Rights Committee in General Comment No. 35 (§12)*.

155. As the African Court on Human and Peoples' Rights (ACHPR) pointed out, in the case *ONYACHI AND NJOKA v. TANZANIA - Application No. 003/2015, of September 28, 2017, that "to determine whether a particular deprivation of liberty is arbitrary or not, the international jurisprudence in human rights establishes three criteria: 1) the legality of deprivation of liberty; 2) the existence of clear and reasonable grounds 3) the availability of procedural safeguards against arbitrariness. These are cumulative conditions and failure to comply with one of them makes deprivation of liberty arbitrary."*

156. And as stated in the "*PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA*", "*States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause." (See Principle M. [1. (b)])*

157. The concept of reasonableness of the grounds for suspicion that legitimize deprivation of liberty, was given by the European Court in the case *FOX CAMPBELL & HARTLEY v. THE UNITED KINGDOM, 1990 ECHR 12244/86, where it wrote that: "'Reasonable Suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the persons concerned may have committed the offence." (Vide parag. 32)*

It remains to be examined whether the criteria for determining the legality of the Applicant's detention and imprisonment are met.

158. In the instant case, as admitted by the Respondent, the Applicant's arrest was due to his uttering, during a radio interview, statements urging his fellow Zinder citizens to leave on Friday to demonstrate their frustration against government officials over the 2018 Finance Bill, clearly inviting these people to go out massively to "***expel these people***" and further stating that "***we also know how to create problems, we will take all necessary steps to disembark these individuals (with reference to the authorities) with malicious intentions, we urge everyone to stand up because one is slaver when he/she submits to the illegal ones***" ((Exhibit 1 is a copy of the Cour

D´Appel de Zinder decision confirming the Applicant's refusal of provisional release)".

159. It should be recalled that, as a civil society actor, the Applicant was an organizer and participant in the protests carried out and that because of these, 3 days after the date of the last protest, in addition to the Applicant, several other people were also detained, among them, Mr. Yahaya Badamassi.

160. With regard to arrests made as a result of exercising the right of freedom of assembly, the "*European Commission for Democracy Through Law, (Venice Commission), (Osce/Odihr) Guidelines on Freedom of* Peaceful *Assembly (3rd ed) §35*, notes that "*Law enforcement should as far as possible avoid the use of containment (a tactic often referred to as "kettling" or "corralling") or mass arrests of participants at an assembly. Such indiscriminate measures may amount to an arbitrary deprivation of liberty under international human rights law. Clear and accessible protocols for the stop, search and arrest or detention of assembly participants must be established.*"

161. Thus, the Applicant's arrest and imprisonment resulting from the violation of his rights to freedom of expression and freedom of assembly automatically amounts to an arbitrary deprivation of his freedom under international human rights law. (See also *AFRICAN COMMISSION MALAWI AFRICAN ASSOCIATION AND OTHERS v. MAURITANIA*, Comm. No. 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), §111)

162. In this regard, the Court finds that the Respondent violated 6 of the African Charter, as well as Articles 9 (1) of the ICCPR, 3 and 9 of the UDHR.

d. The allegation of violation of Article 9 (3) of the Covenant for failure to comply with the reasonable time to carry out the investigation:

163. The Applicant alleged that in the instant case, the means of redress did not allow any redress; whereas, on the contrary, they only confirmed the first decision; that the Prosecution Chamber of the Zinder Court of Appeal violated Article 186, paragraph 2, which requires that Chamber to decide "*an application for provisional release within a short period or, at the latest, 30 days from the first day of the hearing*".

###

164. Article 9 (3) of the ICCPR establishes that:

"*Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*"

165. Likewise, the African Commission, in its "*Principles and Guidelines on the Right to a Fair Trial and legal Assistance in Africa*" in its principle M (4), on "Provisions applicable to arrest and detention", establishes that: "*Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that that judicial body may decides without delay on the lawfulness of his or her detention and order release if the detention is not lawful.*"

166. The above article requires that, in criminal proceedings, any person arrested or detained be promptly presented to a judge or other official authorized by law to exercise judicial power.

167. Thus, the Human Rights Committee, in General Comment No. 8: Article 9 (Right to liberty and security of persons) § 2 stated that "*Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought "**Promptly**" before a judge or other officer authorized by law to exercise judicial power. More precise time limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days...*"

168. The Human Rights Committee, in the case of *MCLAWRENCE v. JAMAICA*, Communication no. 702/1996, § 5.6) clarified that "*While the meaning of the term "**promptly**" in article 9, paragraph 3, must be determined on a case-by-case basis…*"

169. The purpose of this provision necessarily implies that the authority with the right to review and decide on the legality of the detention, treatment in detention and release pending trial or remand in custody must have the independence and impartiality associated with the judicial office. *(*See Human Rights Committee, *New General Comment On The Right To Liberty And Security Of Person Amnesty International's Preliminary Observations, p. 20).*

170. The Applicant alleged that the Prosecution Chamber of the Zinder Court of Appeal violated Article 186, § 2, of the Niger Code of Criminal Procedure.

171. The aforementioned Article establishes that:

"*(...) (Loi n° 63-16 du 21 février 1963). Celle-ci doit, en matière de détention provisoire, se prononcer dans les plus brefs délais et au plus tard dans les trente jours de l'appel faute de quoi l'inculpé est mis d'office en liberté provisoire, sauf si des vérifications concernant sa demande ont été*

ordonnées ou si des circonstances imprévisibles et insurmontables mettent obstacle au jugement de l'affaire dans le délai prévu au présent article (...)"

172. As can be seen, the Prosecution Chamber, in terms of pre-trial detention, must decide as soon as possible and at the latest within thirty days of the appeal.

173. The Applicant attached the decision to the case file no. 180 of 11/21/2018, issued by the Prosecution Chamber of the Zinder Court of Appeal, which rejected his request for provisional release. (Exhibit 8)

174. In the aforementioned decision, p. 1 it appears that the Applicant appealed to the Zinder Court of Appeal Prosecution Chamber on August 28, 2018 and the latter decided on November 21, 2018, that is, more than thirty days later.

175. The Prosecution Chamber of the Zinder Court of Appeal ruled outside the scope of the period provided for in the aforementioned Article 186, paragraph 2 of the Niger Code of Criminal Procedure.

176. Therefore, it is thus established that the legal period foreseen for the decision of an application for provisional release as provided by the aforementioned article has been exceeded, in violation of Article 9 (3) of the ICCPR.

e. The allegation of violation of Article 2 of the Charter:

177. The Article 2 of the Charter establishes that:

"All 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." (See further Articles 1 and 2 of the Universal Declaration of Human Rights)

178. Article 2 of the Charter is imperative in terms of the respect and enjoyment of all other rights and freedoms protected in the Charter. The provision strictly prohibits any differentiated treatment between persons existing in similar contexts on the basis on one or more of the prohibited grounds listed in Article 2 above. (See the case *AJAMI YASMINE MARIE JEANNE v. COTE D'VOIRE STATE,* Judgment No. ECW/CCJ/JUD/12/20 of 8 July 2020, p.41 & 253)

179. The term "any other statute" under Article 2 refers to cases of discrimination that could not have been foreseen during the adoption of the Charter. In determining whether a case falls into this category, the Court will take into account the general spirit of the Charter.

180. It should be noted that although Article 2 of the Charter prohibits distinctions or differences in treatment for reasons specified therein, it should be noted that not all forms of distinction can be considered as discrimination.

181. A distinction or differential treatment becomes discrimination and, therefore, contrary to Article 2, when there is no objective and reasonable justification and, in circumstances where it is neither necessary nor proportional. *(See African Court, AFRICAN COMMISSION ON HUMAN AND PEOPLES'RIGHTS v. REPUBLIC OF KENYA*, Application No 006/12, 26 May 2017 (Ogiek case) § 138 a 141).

182. This Court has reaffirmed the same understanding in several Judgments, namely in cases as in No. *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) & ANOR v. THE REPUBLIC OF SIERRA LEONE*, Judgment No ECW/CCJ/APP/JUD/37/19, pag. 26, in which it held that a treatment is discriminatory where there is no reasonable basis for the differential treatment.

183. In the instant case, the Applicant simply states that the Respondent has violated the cited Article 2. The Applicant does not indicate what kind of discriminatory treatment he was subjected to in comparison with persons who were in the same situation as him, nor does he specify the grounds prohibited by Article 2 of the Charter, the burden of which was on him.

184. For this reason, the Court considers that the Applicant is not the victim of any discriminatory practice that violates the principle of the prohibition of discrimination guaranteed by Article 2 of the Charter.

185. In this sense, the Court concludes that the Applicant's claim is unfounded in this part.

f. The allegation of violation of Articles 7 of the Charter, 14 of the Covenant and 11 of the Universal Declaration of Human Rights for ignoring the Applicant's right to the presumption of innocence:

186. The element of the right to a fair trial, as hereby claimed, is the right to the presumption of innocence.

187. In order to substantiate the violation of this right, the Applicant merely avers that the allegations of the Criminal Investigation Department that the

Applicant conspired against the State and urged an insurrectionary movement, are fallacious; that the offense based on the insurrectionary movement foreseen and sanctioned by the criminal law is not proven; that he saw all of his applications for provisional release dismissed for a materially impossible crime, since he is being accused, alone, of conspiracy against state security; that he first appealed to the investigating judge who dismissed his application for provisional release; that he submitted the same application to the Prosecution Chamber, which in turn rejected the application in its decision of 11/21/2018. (Exhibit 8)

188. That for the same protests, the same Court acquitted the Applicant's prison companion, prosecuted and accused of the same alleged crime, considering that the protest march to which he invited the citizens of Zinder was peaceful and considered in strict accordance with all prerequisites foreseen in this matter by the law that governs street protests. (Exhibit 9).

###

189. The right to be presumed innocent until proven guilty is a fundamental human right and is another principle that conditions the treatment to which an accused person must be subjected during the criminal investigation and the trial, until the final appeal.

190. The essence of the right to a presumption of innocence lies in its prescription that any suspect in a criminal trial is considered innocent at all stages of a process, from the preliminary investigation to the delivery of he judgment. And until his/her guilt is legally established.

191. Thus, follows from Article 7 (1) (b) of the African Charter that:

"1. Every individual shall have the right to have his cause heard. This comprises: (b) "the right to be presumed innocent until proved guilty by a competent court or tribunal;"

192. Likewise, this right is enshrined in other international instruments, namely, in Articles 14 (2) of the ICCPR, 8 (2) of the American Convention on Human Rights and 6 (2) of the European Convention on Human Rights and 11 (1) of the Universal Declaration of Human Rights.

193. The Commission on Human Rights noted in General Comment No. 13, §7, that "(..)*By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.*"

194. The Court stated in the case *BATIONO IDA FLEUR PELAGIE v. BURKINA FASO*, Judgment No. ECW/CCJ/JUD/14/12 of October 31, 2012, LRCCJ (2012), p. 310 §32 that "*The Court observes that the presumption of innocence implies that every person is supposed to be innocent as long as a competent court has not decided on his guilt and has not convicted of the offense that he is charged with; it prohibits all statements, all events, attitudes or behavior likely to believe that a person is guilty before that person is declared as such by the competent court in the context of a judicial proceeding.*"

195. Still the African Court ruled in the case *INGARBIRE HUMUHOZA VICTOIRE v. REPUBLIC OF RWANDA*, Application No. 03.14 of 24 November 2017 that, paragraph 84 "*The essence of the right to presumption*

of innocence lies in its prescription that any suspect in a criminal trial is considered innocent throughout all the phases of the proceedings, from preliminary investigation to the delivery of judgment and until his guilt is legally established."

196. This same Court mentioned in the case *OSGAR JOSIAH v. UNITED REPUBLIC OF TANZANIA*, Application No. 053/2016, March 28, 2019, p. 51 that "*The Court observes that the right to a fair trial and specifically, the right to presumption of innocence requires that a person's conviction on a criminal offence which results in a severe penalty and in particular to a heavy prison sentence, should be based on solid and credible evidence.*"

197. On its turn, the European Court of Human Rights declared in the case *BARBERÁ, MESSEGUÉ AND JABARDO v. SPAIN*, 6 December 1988, § 77 that "*the principle of the presumption of innocence...requires, inter alia, that, in carrying out their duties, members of a court should not begin with the preconceived idea that the accused has committed the accused crime; the burden of proof is on the prosecution, and any doubt should benefit the accused.*"

198. It further highlighted that this right "*does not necessarily prohibit presumptions of law or de facto, but any rule that alters the burden of proof or that applies a presumption operating against the accused must be confined within reasonable limits that take into account the importance of what is at stake and keep the defense rights*" (See *SALABIAKU v. FRANCE*, 7 October 1988, § 28).

199. In the instant case, the Applicant's allegations are not acceptable, as he does not have any arguments that follow the sense of the presumption of innocence, as explained above.

200. Indeed, the Applicant did neither claim nor prove any fact to show that he was found guilty by the Defendant's agents, before his guilt was proven according to the law, beyond any reasonable doubt. In other words, that public authorities have prejudged the outcome of a trial.

201. Therefore, this claim is dismissed.

202. In this regard, the Court finds that the Respondent has not violated the Applicant's right to a presumption of innocence provided for in Article 7 (1)

(b) of the African Charter and Articles 14 (2) of the ICCPR, 11 (1) of the Universal Declaration of Human rights.

g. The allegation of violation of Article 3 of the African Charter:

203. The Applicant claims that for similar facts, his fellow prisoners were released in the context of the same protest, even though the conditions under which he was arrested and kept in prison are the same as those of the latter; more serious still, he was left alone in prison for conspiracy against the security of the State and call for an insurrectionary movement, in violation of the law, namely Article 79, paragraph 3 of the Nigerien Criminal Code, which establishes that such an offense can only be committed by two or more people; that, by definition, the conspiracy integrates the notion of group, that is, criminal community; that the Applicant's co-defendant Mr. Yahaya BADAMASSI, accused of the same charges and under the same circumstances, ended up benefiting from an acquittal because "*the protest march in which he called the citizens of Zinder was peaceful and considered in strict compliance with all the prerequisites foreseen in this matter by the law that governs the demonstrations on public roads*" as underlined the motivation of the Zinder Court of Appeal Prosecution Chamber; that if the Court initially considers that the protest is regular, it can no longer keep the Applicant in prison without violating the principle of equality of citizens under the law.

204. That on May 10, 2019, he benefited from an order for partial acquittal, disqualification, unconditional release, and referral to the correctional police after being detained for more than 12 months in prison, by the 2nd Office of the Zinder High Court, saying that there is no longer any need to proceed with Mr. Saidat Illia Dan Malan's action for conspiring against state security and calling for an insurrectionary movement (Exhibit No. 10)

205. That, however, the Attorney General of the said Court lodged an appeal for the sole purpose of suspending the effect of the investigating judge's decision, keeping the accused in prison; this is all the more true since all of his media interventions were part of the mobilization of citizens to respond to the aforementioned peaceful protests, which are not prohibited.

206. On its turn, the Respondent alleged that the Applicant to support his position, alleges to be a victim of discrimination based on judgment No. 191 of December 5, 2018 by the Prosecution Chamber of the Zinder Court of

Appeal, acquitting Mr. Yahaya BADAMASSI accused of calling for an insurrectionary movement (Exhibit 2).

207. That Mr. Yahaya Badamassi benefited from an acquittal, which in accordance with Article 168 of the Code of Criminal Procedure which establishes, *in fine,* that in the event of a writ of nolle prosequi in favor of the accused and pre-trial prisoners who are beneficiaries, they are released, which is not the case of the Applicant.

208. That the judge made a correct assessment of the facts of the case to conclude that no burden falls on Badamassi before proceeding with his release.

209. That the Applicant is not in the same factual or legal situation to be treated in the same way as Mr. Badamassi.

###

210. The Charter in Article 3 provides that:

"*1. Every individual shall be equal before the law.* (2) Every individual shall be entitled to equal protection of the law."

211. The same right is enshrined in Articles 7 of the Universal Declaration of Human Rights and 26 of the ICCPR.

212. The right to equality, as provided for in the Charter, unfolds in the right to equality before the law and the right to equal protection under the law (Cfr. *KENNEDY OWINO ONYACHI , CHARLES JOHN MWANINI NJOKA v. UNITED REPUBLIC OF TANZANIA, AFRICAN COURT*, Application No. 003/2015, 28 September 2017, pag. 39)

213. The fundamental meaning of equality before the law under Article 3 (1) of the Charter is the right of everyone to equal treatment under similar conditions.

214. The right to equality before the law means that individuals legally under the jurisdiction of a State must expect to be treated fairly within the legal system and to be guaranteed equal treatment under the law and equal enjoyment of the rights available to all other citizens. This means the right to have the same procedures and principles applied under the same conditions. The principle that all people are equal before the law means that existing laws must be applied in the same way to everyone who is subject to them.

215. The right to equal legal protection implies the existence of laws that guarantee rights and freedoms; prohibits acts and omissions that constitute a violation of rights and freedoms. In addition to the existence of such laws, protection of the law includes ensuring that individuals will have access to mechanisms, institutions and lawsuits to assert their rights and obtain solutions when they are violated.

216. Moreover, Article 3 of the Charter guarantees that such protection should be granted to all persons in similar situations in the same manner and measures. These elements constitute the essence of Article 3 of the Charter.

217. In this regard, the African Commission on Human and Peoples' Rights affirmed, in the case of *LEGAL RESOURCES FOUNDATION v. ZAMBIA*, Communication no. 21/98) [2001] ACHPR 31; of May 7, 2001, §63, that "*The right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or lack of it affects the capacity of one to enjoy many other rights.*"

218. This court, in the case *AGRILAND CO. Ltd v. Republic of Côte d'Ivoire, Judgment No. ECW/CCJ/JUD/07/15 of 24 April 2014, pp. 13&42 observed that "(...) violation of the principle of equality before the law should result from the conduct of discriminatory acts against a citizen by an administration or any person in whom authority is vested, on the basis of the victim's sex, race, origin, nationality, ethnicity, religion, etc (...)*" (See also the case *FARIMATA MAHAMADOU & 3 ORS v. REPUBLIC OF MALI*, Judgment No. ECW/CCJ/JUD/11/16 of 17 May 2016, §65 to 68).

219. In the instant case, the Applicant intends to claim that he had an unequal treatment in relation to Mr. Yahaya BADAMASSI, who was denounced for the same charges and in the same circumstances, ended up benefiting from an acquittal based on the understanding that the protest march in which he called the protesters citizens of Zinder was peaceful and considered in strict compliance with all the prerequisites foreseen in this matter by the law that governs the protests on public roads.

220. The Applicant submitted that if the Court initially considers that the march is regular, it can no longer keep him in prison without violating the principle of equality of citizens before the law.

221. In the instant case, it was up to the Applicant to plead the facts, describing them in detail, in order to demonstrate that he and Mr Yahaya BADAMASS were in the same circumstances and that they had an unequal treatment by the Defendant. In other words, that they were indicted for the

practice of the same facts, in the same circumstances (date, place of the facts) and with the same legal framework of the facts, a generic mention of the facts is not enough, as he did.

222. The Applicant gathered to the case file the Decision no. 191 of 12/05/2018 issued by the Prosecution Chamber of the Zinder Court of Appeal in relation to Mr. Yahaya BADAMASS (Exhibit 9), which states that:

"*....Attendu qu'il ne résulte nullement des pièces du dossier de la procedure que Badamassi Yahaya avait appelé qui que ce soit à commetre des actes prévus aux articles 89 e 90 du code penal ou semblables à pareils actes; qu'aucune pièce du dossier n'établit que l'inculpé avait dirigé ou organisé une manifestation ou envisage d'organiser une insurrection ou un soulèvement populaire ou cours duquel les actes spécifiés auxdits textes de loi ou similaires ont été ou seront commis; que l'instruction préparatoire dont la présente affaire avait fait l'objet n 'a pas pu é tablir que Badamassi Yahaya avait agi à travers au moins un seul des actes proscrits par l'article 91 du code pénal en vue d 'obtenir la comission des actes interdits aux articles 89 e 90 de ce code ou qu'il avait pouussé, incité, apprlé ou aidé qui ce soit `a les commetre...*"

223. As can be seen, as stated in the referred decision, as it has not been proved that Mr Yahaya BADAMASS has practiced the facts provided for in Articles 89 and 90 of the Respondent's Criminal Code, the Prosecution Chamber of the Zinder Court of Appeal ordered his release.

224. Different from the Applicant's alleged situation, as can be seen in decision No. 180 of 11/21/2018 of the Prosecution Chamber of the Zinder Court of Appeal. (Exhibit 8)

225. Thus, it is concluded that in the instant case the Applicant did not claim nor succeeded in proving that, placed under similar conditions with Mr. Yahaya BADAMASS, he had an unequal treatment by the Defendant.

226. That is, it has not been proved that the Applicant and Mr. Yahaya BADAMASS, placed in similar situations, the existing laws were applied differently (right to equality before the law), or that in a different way they had access to mechanisms, institutions and processes to claim their rights and obtain solutions when they suffered violations in same conditions (right to equal protection by law).

227. In this sense, the Court understands that the Respondent did not violate Article 3 of the African Charter, so his claim should be dismissed in this part.

h. The allegation of violation of Article 2 of the ICCPR:

228. Article 2 of the Covenant defines the scope of the legal obligations assumed by States Parties to the Covenant.

229. It establishes a general obligation which is imposed on States Parties to respect the rights provided for in the Covenant and to guarantee them to all individuals in their territory and subject to their jurisdiction. In accordance with the principle articulated in Article 26 of the Vienna Convention on the Law of Treaties, States Parties are obliged to fulfill their obligations under the Covenant in good faith.

230. Article 2, paragraph 1, provides that the obligation to respect and guarantee the rights recognized by the Covenant has immediate effect for all States Parties. Article 2, paragraph 2, provides for a comprehensive framework within which the rights specified in the Covenant are to be promoted and protected.

231. States Parties in order to guarantee the rights of the Covenant will only be fully discharged of liability if individuals are protected by the State, not only against violations of rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are enforceable between private persons or entities. (See Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 § 3-8)

232. To the same effect, Article 1 of the African Charter provides that "*The Member States (...) parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter...*"

233. This Article 1 gives the Charter the binding legal force attributed to international treaties of this type. Therefore, a violation of any provision of the Charter automatically means a violation of its Article 1. (See *AFRICAN COMMISSION ON HUMAN AND PEOPLES 'RIGHTS, SIR DAWDA K JAWARA v. THE GAMBIA*, Comm No. 147/95, 149/96, 11 May 2000, para. 46).

234. In the instant case, since it is established that the Republic of Niger is a State party to the African Charter and the International Covenant on Civil and Political Rights, this means that it has recognized its provisions and incorporated them into its domestic law and is therefore bound to guarantee the rights provided for therein.

235. In this sense, this Court finds that the Respondent, by violating Articles 6, 9 and 11 of the Charter and 9 (1) and (3), 21.19 of the ICCPR, automatically violated Articles 1 of the Charter and 2 of the ICCPR.

XII – REPARATION

236. The Applicant intends that he be compensated due to the damages he has suffered, but did not request any monetary value.

237. The Respondent said nothing in connection with this relief sought.

238. In the instant case, it was established that the Respondent State, through its agents, violated the Applicant's rights to freedom of assembly, freedom of opinion and right to freedom and security, as explained above, which gives the Applicant the right to reparation, according to the principle of international law, which states that "*everyone who is a victim of a violation of his human rights has the right to fair and equitable redress*", whereas in terms of human rights violations, full reparation is, as a rule, impossible. (See Judgment No. ECW/CCJ/JUD/01/06, rendered in the case *DJOT BAYI TALBIA & OTHERS v. FEDERAL REPUBLIC OF NIGERIA & OTHERS* in CCJ ELR (2004-2009)).

239. Now, considering the seriousness of the violated rights and their consequences for the Applicant, making a global and equitable assessment, the Court attributes to the Applicant, as compensation for immaterial damages that he suffered in the amount of 50.000.000 (fifty millions) XOF.

XII. EXPENSES

240. The Applicant did not present any claim regarding expenses.

241. The Respondent, in turn, asks the Court to order the Applicant to bear the costs of the proceedings.

242. Article 66 (1) of the Court's Rules of Procedure provides that "*The judgment or order that ends the process decides on expenses.*"

243. Paragraph 2 of the same Article states that "*The unsuccessful party is ordered to pay the costs if so decided.*"

XIII. OPERATIVE CLAUSE

244. For these reasons, the Court held a public hearing and having heard both parties:

With regards to the form:

i. **Declares** that it entertains jurisdiction to examine the cause.

ii. **Declares** that the application is admissible.

On the merit:

iii. **Declares as established** the violation of the right to freedom of assembly of the Applicant by the Respondent, provided for in Articles 11 of the African Charter and 21 of the ICCPR.

iv. **Declares as established** the Respondent's violation of the Applicant's right to freedom of expression provided for in Articles 9 of the African Charter, 19 of the (UDHR) and 19 of the ICCPR.

v. **Declares** that the Respondent's arrest and detention by the Respondent was arbitrary and illegal under Articles 6 of the African Charter, 9 (1) of the ICCPR, 3 and 9 of the UDHR.

vi. **Declares as established** the Respondent's breach of obligations under Articles 1 of the African Charter and 2 of the ICCPR.

vii. **Declares as not established** the Defendant's violation of the principle of the prohibition of discrimination provided for in Article 2 of the African Charter.

viii. **Declares as not established** the violation of the Applicant's right to a presumption of innocence by the Respondent provided for in Articles 7 (1) (b) of the African Charter, 14 (2) of the ICCPR and 11 (1) of the UDHR.

ix. **Declares as not established** the violation by the Respondent's of the Applicant's right to equality provided for in Article 3 of the African Charter.

WITH REGARDS TO REPARATION

x. **Regarding the release of the Applicant:**

Orders that the Respondent releases the Applicant immediately.

xi. **Regarding compensation:**

Orders the Respondent to pay the Applicant the amount 50.000.000 (fifty millions) XOF as reparation for immaterial damages suffered for the violation of his rights.

XIV. COMPLIANCE AND REPORTING

xii. Orders that the Respondent State submit to the Court, within three (3) months from the date of notification of the present judgment, a report on the measures taken to implement the orders therein imposed.

XV. On the Costs

xiii. In accordance with Article 66 (1) of the Rules of Procedure of the Court, the expenses will be borne by the Respondent State.

Signed by:

Hon. Justice Edward Amoako **ASANTE** – Presiding ________________

Hon. Justice Gberi-Be **OUATARA** – Member ________________

Hon. Justice Januária T.S.M. **COSTA** – Member/Rapporteur Judge

Assisted by:

Mr. Tony Anene **MAIDOH** – Chief Registrar ________________

245. Done in Abuja, on the 22nd day of June 2021, in Portuguese and translated into French and English.