

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF
BENEFICIARIES OF LATE NORBERT ZONGO, ABDOULAYE NIKIEMA ALIAS
ABLASSE, ERNEST ZONGO AND BLAISE ILBOUDO & THE BURKINABÈ
MOVEMENT ON HUMAN AND PEOPLES' RIGHTS

v.

BURKINA FASO

APPLICATION No. 013/2011

JUDGMENT ON REPARATIONS



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Aes

The Court composed of: Augustino S.L. RAMADHANI, President; Elsie N. THOMPSON, Vice-President; Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORE, El Hadji GUISSSE, Ben KIOKO, Rafâa BEN ACHOUR, Solomy B. BOSSA, and Angelo V. MATUSSE, Judges; and Robert ENO, Registrar,

In the Matter of:

Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiéma alias Ablassé, Ernest Zongo and Blaise Ilboudo & The Burkinabè Movement on Human and Peoples' Rights

represented by:

Advocate Ibrahima KANE, Counsel

Advocate Chidi Anselm ODINKALU, Counsel

v.

Burkina Faso,

represented by:

Advocate Antoinette OUEDRAOGO, Counsel

Advocate Anicet SOME, Counsel

After deliberations,

renders the following Judgment on reparations:

I. SUBJECT OF THE APPLICATION

1. In its earlier Judgement of 28 March 2014 on this matter, after finding that the Respondent State had violated Article 1 of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), Articles 7 and 9 (2) of the Charter, the latter read jointly with Article 66 (2) (c) of the Revised Treaty of the Economic Community of West African States (ECOWAS), the Court decided as follows on damages:

"6. *Defers* its ruling on the issue of damages;

7. *Orders* the Applicants to submit to the Court their Brief on damages within thirty days from the date of this ruling; and also *orders* the Respondent State to submit to the Court its response on the damages within thirty days after receiving the response of the Applicants".

2. The present Judgment is therefore in respect of the claims for reparation filed by the Applicants pursuant to the afore-cited Judgment of the Court. According to the Applicants, the claims concern, firstly, the violation of Article 7 of the Charter by the Respondent State, as it had shown no diligence to apprehend, investigate, prosecute and put to trial those responsible for the murder of Norbert Zongo and his three companions. The claims also relate to the violation of Article 9 (2) of the Charter read jointly with Article 66 (c) of the Revised ECOWAS Treaty, to wit, the violation of the right of Burkinabè journalists to freedom of expression, in the sense that "the Respondent State's failure to find and put to trial the assassins of Norbert Zongo caused fear and anxiety in [local] media circles". It is to be noted, however, that no argument was advanced and no specific application for reparation filed in furtherance of the Brief on Reparations for the aforementioned violation of freedom of expression. The Court will therefore not make any ruling on reparation in this regard.

II. SHORT BACKGROUND OF THE MATTER¹

3. The facts of the matter date back to the assassination, on 13 December 1998, of Norbert Zongo, an investigative journalist, and his companions. Messrs Abdoulaye Nikiéma alias Ablassé and Blaise Ilboudo were collaborators of Mr. Zongo, and Ernest Zongo was his younger brother.

4. In their initial application dated 10 December 2011, the Applicants alleged that “the murder of the four persons on 13 December 1998 ... [was] connected with investigations that Norbert Zongo was conducting on various political, economic and social scandals in Burkina Faso during that period, notably the investigation of the death of David Ouédraogo, the chauffeur of François Compaoré, brother of the President of Faso and Adviser at the Presidency of the Republic”.

5. After the Police and the Office of the Public Prosecutor in Burkina Faso had carried out investigations into the matter of the quadruple assassination, one of the suspects identified was indicted in February 2001.

6. In July 2006, an Order was issued by the Investigating Magistrate of Ouagadougou District Court dismissing the case in favour of the indicted person for lack of evidence.

7. In August 2006, an appeal filed against the Order by Norbert Zongo’s family at the indictment chamber of the Ouagadougou Court of Appeal, was thrown out by that Court, and the dismissal for lack of evidence upheld.

8. Following these developments, the Applicants alleged before this Court the concurrent violation of the provisions of various international human rights instruments to which Burkina Faso is a party, namely:

(i) The Charter: Article 1 (obligation to adopt legislative or other measures to give effect to the rights enshrined in the Charter); Article 3 (equality before the law and equal protection of the law); Article 4 (the right to life); Article 7 (the right for one’s cause to be

¹ For details on the facts and historical development of the case, see the Judgment of the Court dated 28 March 2014, paras 2 to 19.

heard by competent national courts); and Article 9 (the right to express and disseminate one's opinion);

(ii) The International Covenant on Civil and Political Rights: Article 2 (3) (the right to effective remedy in case of violation of rights); Article 6 (1) (the inherent right to life); Article 14 (the right to have one's cause heard by a competent, independent and impartial tribunal); and Article 19 (2) (right to freedom of expression);

(iii) The Revised ECOWAS Treaty: Article 66.2 (c) (obligation to ensure respect for the rights of journalists);

(iv) The Universal Declaration of Human Rights: Article 8 (the right to an effective remedy by the competent national tribunals in case of violation of rights).

9. The Respondent State having raised various objections regarding the Court's jurisdiction and admissibility of the Application, the Court first decided on the said objections in its Ruling of 21 June 2013².

10. As earlier indicated, the Court, in the above mentioned Judgment of 28 March 2014, found that the Respondent State violated certain provisions of the Charter (*supra*, para 1).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

11. After requesting and obtaining from the Court an extension of the time limit, the Applicants transmitted to the Registry of the Court their Brief on Reparations by e-mail dated 7 June 2014, received at the Registry on 9 June 2014. Attached to the Brief were two presidential decrees dated 9 June 1999 and 11 June 1999, respectively, offering social welfare cover and special allowances, notably for the beneficiaries and direct

² See the Ruling of 21 June 2013, para 125.

descendants of Norbert Zongo, Ernest Yembi Zongo, Blaise Ilboudo and Ablassé Nikiéma.

12. By e-mail dated 2 July 2014, received at the Court Registry on the same date, the Applicants submitted to the Registry a corrigendum to the Brief on Reparations. The following documents in particular were attached to the said corrigendum: a number of civil status documents (birth certificates, marriage certificates, identification cards, certificates of identity, deeds of filiation, life certificates, certificates of parental authority, nationality certificates, etc.) aimed at proving the beneficiaries' relation of kinship with the victims of the assassinations of 13 December 1998; the Indicative Scale of Costs and Fees for Lawyers of Burkina Faso, dated 20 December 2003 (excerpt); fees agreements; ministerial order of 13 July 1999 on special allowance particularly for the individual Applicants in this matter; letters from some Applicants declining the special allowance offer made by the Respondent State; Arusha hotel bills and air tickets for the purpose of the public hearings before the Court; land transport and visa fees receipts.

13. After requesting and obtaining from the Court an extension of the time limit, the Respondent State submitted to the Registry its Brief in Response to the Applicants' Reparations claim, by letter dated 6 October 2014, received in the Registry on 20 October 2014.

14. By letter dated 17 November 2014, the Applicants in response to the Respondent State's Brief, notified the Court that they had no observations to make on the said Brief except that they refuted the allegation made by the Respondent State that it contributed financially and yearly to the funding of the functioning of the Burkinabè Movement on Human and Peoples' Rights just like other associations.

15. At its Thirty-Sixth Ordinary Session held in Arusha, Tanzania, from 9 to 27 March 2015, the Court declared the proceedings closed and decided to commence deliberation on the matter.

16. By letter dated 30 April 2015, the Registry requested the Applicants to forward to the Court the complete version of a document, the excerpt of which they had earlier filed (Indicative Scale of Costs and Fees of Lawyers of Burkina Faso), and to submit a

complete set of the supporting documents which they had submitted to the Court in respect of the transport fares and sojourn expenses incurred by the Applicants' representatives in Arusha. By letter dated 14 May 2015, received at the Registry of the Court on 2 June 2015, the Applicants submitted the Indicative Scale of Fees as requested, as well as a set of supporting materials which, however, turned out to be virtually the same as those initially submitted. For its part, the Respondent State, to which the Registry's letter had been copied, forwarded a copy of the Indicative Scale by e-mail, received at the Registry on 28 May 2015 indicating, however, that it was incumbent on the Applicants to furnish the supporting materials requested.

IV. PRAYERS OF THE PARTIES

17. During the proceedings, the following prayers were presented by the Parties;

On behalf of the Applicants,

in the Brief :

"21. Mindful of the abovementioned points of law and of facts, and without any prejudice to elements of fact and of law and evidence which may be adduced subsequently, as well as the right to complement and amend the present Brief, the beneficiaries of late Norbert Zongo, Abdoulaye alias Ablassé Nikiéma, Ernest Zongo and Blaise Ilboudo and the Burkinabè Movement on Human and Peoples' Rights (*MBDHP*) [pray] your Court to order Burkina Faso to grant them the sum of three hundred and forty-nine million, nine hundred and thirty-four thousand, seven hundred and five (349,934,705) CFA F for reparation for the prejudice caused by the violation of the rights which it acknowledged [as guilty] in the case of the assassination of journalist Norbert Zongo and his companions".

in their Corrigendum:

"9. Based on the facts and law mentioned above and without prejudice to the elements of facts and of law and evidence which could subsequently be presented as well as the right to supplement and amend the present document, the beneficiaries of the late Norbert Zongo, Abdoulaye alias Ablassé Nikiéma, Ernest Zongo and Blaise Ilboudo and the Burkinabè Human and Peoples' Rights Movement (*MBDHP*) [pray] the Court to order Burkina Faso to grant them the sum of four hundred and twenty-four million two hundred and seventy-seven thousand two hundred and five (424,277,205) CFA F as reparation for damages caused by the violation of the rights for which they were found guilty in the matter of the assassination of journalist Norbert Zongo and his companions".

On behalf of the Respondent State,

In the Brief in Reply:

"71. Based on the reasons mentioned above, the State of Burkina Faso respectfully prays the Court to:

- Rule that the Applicants have not produced or have produced insufficient, documents to justify their status and identity; and have thus not established proof of their close or filial relation to the direct victims who are late Norbert Zongo, Ernest Yembi Zongo, Blaise Ilboudo and Abdoulaye Nikiéma alias Ablassé;

Thus, decide that they do not have the status of indirect victims and cannot claim any reparation whatsoever;

-Dismiss the request of the Burkinabè Human and Peoples' Rights Movement (*MBDHP*) for the payment of the sum of 45,734,705 CFA F, as groundless;

-In the alternative, uphold the payment of a symbolic 1 Franc as reparation for moral prejudice;

-State that the fees of the Applicants' lawyers are not specific or general damages and consequently throw them out;

Alternatively,

-State that the amounts requested as lawyers' fees are exorbitant and reduce the said amount to a total of 20,000,000 CFA F, which breaks down to 5,000,000 CFA F each per family of the indirect victims;

-Lastly, regarding transport and sojourn costs in Arusha, Tanzania, estimated by the indirect victims and their Counsel at 6,542,500 CFA F, the State of Burkina Faso leaves it to the very wise appraisal of the Court".

18. It is apparent, on the whole, that the Applicants are claiming damages for the prejudice they suffered; reimbursement of the costs and expenses they incurred; and at the same time, asking for measures of satisfaction and guarantees of non-repetition.

The Court will now consider these main prayers one after the other.

V. CLAIMS OF DAMAGES

19. Before considering specific claims for compensation, the Court would first like to make a number of preliminary observations of a general nature.

A) Preliminary Observations

20. The Court recalls, firstly, that under international law, a country found guilty of an international crime is required to make full reparation for the damage caused.

This obligation was stated by the Permanent Court of International Justice in a *dictum* in *The Factory at Chorzów case*, in the following words:

"It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself".³

21. This statement was subsequently put in the following words by Article 31 (1) of Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (ILC) and submitted to the United Nations General Assembly in 2001:

"1. The responsible State is under the obligation to make full reparation for the injury caused by the internationally wrongful act"⁴.

22. In the context of the African human rights protection system, this principle is reflected in Article 27 (1) of the 10 June 1998 Protocol establishing this Court, which provides that:

"If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

³ PCIJ: *The Factory at Chorzów*, (Jurisdiction) Judgment of 26 July 1927, Series A, No. 9 (1927), p. 21; See also: *Idem* (Merits), Judgment of 13 September 1928, Series A, No. 7, p. 29.

⁴ *Yearbook of the International Law Commission*, 2001, Vol. II (2); The UN General Assembly took note of the Draft Articles by its resolution 56/83 of 12 December 2001.

23. In the instant case, the Court having found in its Judgment of 28 March 2014 above-cited that there have been violations of the Charter by the Respondent State, this State is liable to make full reparation for the prejudice caused to the Applicants.

24. The Court would further like to recall that, in accordance with international law, for reparation to accrue, there must be a causal link between the wrongful act that has been established and the alleged prejudice. On that score, Article 31(2) of the Draft Articles on Responsibility of States mentioned above indeed refers to a "prejudice ... resulting from an internationally wrongful act by a State"⁵.

25. In the instant case, therefore, it is only damages resulting from identified wrongful acts that the Court will take into consideration.

26. The Court would further like to note that, according to international law, both material and moral damages have to be repaired. In terms of Article 31(2) of the Draft Articles on Responsibility of States mentioned above: "Injury includes any damage, whether material or moral..."⁶

27. According to *Dictionnaire de droit international public*, material damage is "one that affects economic or material interest, that is, interest which can immediately be assessed in monetary terms"⁷. As for moral damage, it is defined as one that affects the reputation, sentiments or affection of a natural person who enjoys diplomatic protection or who can be sued"⁸. (Registry translation)

⁵ *Ibidem*. See also: IACHR: *Ticona Estrada and Others v. Bolivia* (Merits, Reparations and Costs), Judgment of 27 November 2008, para. 110: "The reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the resulting damages. Therefore, the Court must observe such coincidence in order to adjudge and declare according to law."

⁶ *Yearbook of the International Law Commission*, 2001, Vol. II (2), p. 28.

⁷ *Dictionnaire de droit international public*, Jean SALMON, ed. Bruxelles, Bruylant, 2001, p. 361

⁸ *Ibidem*. See also: IACHR: *Cantoral Benavides v. Peru* (Reparations and Costs), Judgment of 3 December 2001, para 53: "Non-pecuniary damages might include the pain and suffering caused to the direct victims and to their loved ones, discredit to things that are very important for persons, other adverse consequences that cannot be measured in monetary terms, and disruption of the lifestyle of the victim or his family".

28. In the instant case, the Applicants are in fact claiming reparations both for the moral prejudice endured by them, and for the material prejudice suffered by the MBDHP; and so, the Court will naturally examine the two types of damages.

29. The Court also notes that reparation may take several forms. According to Article 34 of the ILC Draft Articles above cited:

"Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.⁹

30. Lastly, the Court notes that, in the instant case, the internationally wrongful act generating the international responsibility of the Respondent State is the violation of Article 7 of the Charter because this State "did not act with due diligence in apprehending, prosecuting and putting on trial those responsible for the murder of Norbert Zongo and his three companions"¹⁰. All these claims for reparation must therefore be considered and assessed in relation to the wrongful act, and only in relation to this act.

31. In light of all the foregoing observations, the Court will now examine the different claims for reparation filed by the Applicants.

⁹ *Yearbook of the International Law Commission*, 2001, vol. II (2); See in this respect: United Nations Committee against Torture: *Kepra Urra Guridi v. Spain*, Decision of 17 May 2005, Communication No. 212/2002, para. 6.8; *Idem: Ali Ben Salem v. Tunisia*, Decision of 7 November 2007, Communication No. 269/2005, para. 16.8: "The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case". PCIJ: *The Factory at Chorzów* (Merits), Judgment of 13 September 1928, *Series A*, No. 17, p. 47; IACHR: *Castillo Paez v Peru* (Reparations and Costs), Judgement of 27 November 1998, paras 48 and 51; IACHR: *Barrios Altos, Chumbipuma Aguirre and Others v. Peru* (Reparations), Judgment of 30 November 2001, para 25; IACHR: *Caracazo v. Venezuela* (Reparations and Costs), Judgment of 29 August 2002, para. 77.

¹⁰ Judgment of the Court in this Matter dated 28 March 2014, para. 156.

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B) Claims for reparation of moral prejudice¹¹

1) *The Applicants, natural persons*

32. In their Brief on Reparations, the Applicants, natural persons, namely: the beneficiaries of Norbert Zongo, Abdoulaye Nikiéma *alias* Ablassé, Ernest Zongo, and Blaise Ilboudo, are claiming reparation essentially on account of the "pain, physical and emotional suffering and trauma" suffered by them "throughout the duration of the lengthy legal procedure, which is entirely ascribable to Burkinabè authorities."

33. They pointed out that "to wait for nearly eight years for a hypothetical notification from the court to be able to provide the Judge with information likely to help him follow a line of enquiry to track down the perpetrators of the assassination of one's relatives"... "to wait endless hours in front of the chambers of counsel and/or investigating magistrates in search of news about these persons" ... "and spend sleepless nights 'brooding over' the difficulties encountered on a daily basis in the quest for the truth" have been, for the beneficiaries, "ordeals to which it is almost impossible to 'attach' a cost".

34. They further stated that even if the Judgment of 28 March 2014 may in itself be a form of reparation, "the length of the judicial proceedings, the suffering and persecutory treatment that they caused, the changes that they brought about in the life of the beneficiaries and, above all, the situation of impunity enjoyed by the perpetrators of the assassination of Norbert Zongo and his companions, - all justify the grant of monetary compensation, based on the principle of equity...which could give them [the Applicants] the feeling of a fair reparation for the prejudice suffered".

35. They underscored in this regard that they had categorically refused the social welfare cover in the form of feeding, healthcare and education as well as a special allowance offered by the Respondent State in 1999, because they did not want "any support from the State as long as the perpetrators of the assassination had not been brought to book before Burkinabè courts.

¹¹ The Applicants are referring to "non-pecuniary damages", whereas in reality, the issue is one of application for "pecuniary" damages for "moral" prejudice.

36. On that score, they claim the following amounts based on the list of persons they consider to be beneficiaries from each family, and on a lump sum to be granted to each of them:

(i) For the beneficiaries of Norbert Zongo, they are claiming 149 million CFA F for 43 beneficiaries; with 25 million CFA F million for his spouse, 10 million for his mother, 1 million for each of the six stepmothers, 15 million for each of the five children, 2 million for each of the sixteen uterine sisters or step-sisters, and 2 million for each of his uterine brothers or step-brothers.¹²

(ii) The beneficiaries of Ernest Zongo, for their part, are claiming 49 million CFA F for 37 beneficiaries with 10 million for his mother, 1 million for each of the six step-mothers, 2 million for each of the sixteen uterine sisters or step-sisters, and 2 million for each of the fourteen brothers or step-brothers.¹³

(iii) As for the beneficiaries of Blaise Ilboudo, they are claiming 30 CFA F million for 07 beneficiaries with 10 million for his father, 10 million for his mother, 2 million for each of the two uterine sisters, and 2 million for each of the three uterine brothers.

(iv) Lastly, the beneficiaries of Abdoulaye Nikiéma alias Ablassé are claiming 29 million CFA F for four beneficiaries with 10 million for his mother, 15 million for his son, and 2 million for each of his two uterine sisters.

37. In its Brief in Response, the Respondent State argues that the individual Applicants have failed to adduce sufficient evidence either in terms of Burkinabè domestic law or in terms of international law to justify their status as beneficiaries which they are claiming to be.

¹² The exact total is in reality 176 million CFA F

¹³ It is noteworthy that in the corrigendum to the Brief, the Applicants are claiming the sum of 64 million CFA F for the same beneficiaries with the same individual rates but without any explanation. The exact total in fact stands at 76 million CFA F.

38. The Respondent State first submits that according to Burkinabè Law, the status of widow presupposes that two conditions have been met: marriage (attested by a marriage certificate), and death of the spouse (proven by a death certificate). It points out that these two conditions have been fulfilled in the case of the widow of late Norbert Zongo.

39. It further argues that the status of child or descendant is determined by filiation resulting in the relationship which itself is evidenced by civil status registration. It submits that, in the instant case, "these conditions are partially met by some interested parties and completely ignored by others".

40. Lastly, the Respondent State points out that estates are deferred to children and descendants of the deceased, to ascendants, to collateral parents and to surviving spouse in the order established by law; and that in particular, "fathers, mothers, brothers and sisters can only inherit where there were no children or descendants".

41. It then submits that according to international and community law and, in particular, under the jurisprudence of major international jurisdictions (Human Rights Committee, Inter-American Court, European Court, African Commission and African Court), "only members of the family who have close filial relations with the direct victim are considered as indirect victims with rights to reparation". It argues however that they have to furnish proof of such relationship.

42. On the whole, the Respondent State noted that, in the instant case, whereas some beneficiaries produced both birth and life certificates, others however submitted only one certificate (birth or life certificate) or identification papers which are no longer valid and are therefore not expected to be used to attest to their identity, because the papers in question have ceased to exist in Burkina Faso for more than ten years; and others still did not provide any document at all.¹⁴ It noted that none of the Applicants' families has produced a certificate of inheritance, "a basic document in Burkinabè national law that alone attests to the status of inheritor."

¹⁴ On this score, the Respondent State presents a comprehensive Table of the categories of beneficiaries (paras 35 to 40).

43. In conclusion, the Respondent State submits that, in all, "the Applicants have not justified their status as beneficiaries or indirect victims, and therefore cannot lay claim to any reparation."

44. The Court notes that what is in discussion here between the parties, are the following issues: the notion of victim who is likely to become beneficiary of reparation and application of this notion in the instant case; the type of evidence to adduce to establish the status of victim; and the amount of reparation being claimed. It is also important to clarify the issue of proof of the causal link between the wrongful act and the moral prejudice suffered.

a) The notion of victim and its application in the instant case

45. Whereas the Applicants have, in all, listed a considerable number of beneficiaries including not only the spouse and the children of the deceased, but also their fathers and/or mothers, their step-mothers and their brothers and sisters, the Respondent State submits that not all of them are beneficiaries, and that in particular, according to Burkinabè law, fathers, mothers, brothers and sisters may inherit only where there are no children and descendants. The Respondent State thus places the victims entitled to reparation on the same footing as the heirs of the deceased persons according to Burkinabè law. Going by this concept, and in the circumstances of this case, only the children and, where applicable, the spouses, would be the victims of the human rights violations established by the Court.

46. The Court is of the opinion that, in international human rights law, the notion of victim must not necessarily be limited to that of the first-line heirs of a deceased person under national law. This notion may indeed encompass not only first-line heirs but also possibly other close relatives of the deceased, who can reasonably be considered as having suffered moral prejudice as a result of the violation of the human rights in question.

47. According to Principle 8 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* adopted by the UN General Assembly on 16 December 2005:

"For purposes of the present document, 'victims' are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".¹⁵

48. Regarding the content of the notion of closest relatives of the direct victim, international jurisprudence is not rigorously uniform. Whereas, for instance, the Inter-American Court of Human Rights has in some cases considered closest relatives as fathers, mothers, children and spouses¹⁶, it has in most cases also included brothers and sisters of the direct victim.¹⁷

¹⁵ In the same vein: Committee on Human Rights: *Shirin Aumeeruddy-Cziffra and 19 Other Mauritian Women v. Mauritius*, Decision of 9 April 1981, Communication 035/1978, para. 9.2: "A person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken"; ECHR: *Aslakhanova v. Russia*, Judgment of 18 December 2012, para. 133: "...the applicants, who are close relatives of the disappeared men, must be considered victims of a violation of Article 3 of the Convention, on account of the distress and anguish which they suffered, and continue to suffer, as a result of their inability to ascertain the fate of their family members and of the manner in which their complaints have been dealt with."

¹⁶ See for example: IACHR: *Bulacio v. Argentina* (Merits, Reparation and Costs), Judgment of 18 September 2003, para. 85; IACHR: *Chitay Nech and Others v. Guatemala*, (Preliminary Objections, Merits, Reparations and Costs), Judgment of 25 May 2010, para 220: " ...this Tribunal has found that it can declare a violation of the right to physical and moral integrity of the direct next of kin of victims of certain violations of human rights such as forced disappearance, by applying a presumption *ius tantum*

regarding mothers and fathers, sons and daughters, husbands and wives, and permanent domestic partners (hereinafter, 'direct next of kin'), so long as this corresponds to the particular circumstances of the case. Regarding the said direct next of kin, it corresponds to the State to rebut the said presumption"; IACHR: *Gonzalez Medina and Others v. Dominican Republic*, (Preliminary Objections, Merits, Reparations and Costs), Judgment of 27 February 2012, para. 270.

¹⁷ See for example: IACHR: *Loayza Tomayo v. Peru*, (Reparations and Costs) Judgment of 27 November 1998, para. 92; IACHR: *Myrna Mack v. Guatemala*, (Merits, Reparations and Costs), Judgment of 25 November 2003, para. 243; IACHR: *Ituango Massacres v. Colombia*, (Preliminary Objections, Merits, Reparations and Costs), Judgment of 1 July 2006, para. 264: "In keeping with its case law ... the Court considers that the adequately-identified immediate next of kin are the direct descendants and ascendants of the alleged victim, namely: mother, father, children, and also siblings, and spouse or permanent

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49. In any case, it is apparent that the issue as to whether a given person may be considered as one of the closest relatives entitled to reparation has to be determined on a case-by-case basis, depending on the specific circumstances of each case.

50. In the context and circumstances of the instant case, there is no doubt that many people suffered morally, in varying degrees, from the lack of due diligence on the part of the authorities of the Respondent State in apprehending, prosecuting and putting to trial the perpetrators of the quadruple assassination; but one may reasonably consider that those who acted (directly or by representation) on the very front line in this respect and suffered the most from the situation are the spouses, children, fathers and mothers of the deceased. These are therefore the persons who, in the instant case, may claim the status of victim, and therefore lay claim to reparation, if at least the concrete evidence of this status is duly adduced.¹⁸ Going by this reservation, the persons mentioned in the following paragraphs are entitled to reparation for the moral prejudice suffered:

- (i) As regards the beneficiaries of Norbert Zongo, the victims are Zongo Somda, Geneviève (spouse); Zongo Guy Bonaventure (son); Zongo, Antoine (son); Zongo, Arnold (son); Zongo, Judith (daughter); Zongo Constant (son); and Nana Augustine (mother).
- (ii) As regards the beneficiaries of Ernest Zongo, the victim is Yameogo, Talba Rosalie (mother).
- (iii) As for the beneficiaries of Blaise Ilboudo, the victims are Iloudo, Jonas (father); and Yanogo, Deborah (mother).
- (iv) As regards the beneficiaries of Abdoulaye Nikiéma alias Ablassé, the victims are Ouedraogo, Kouiliga (mother); and Nikiéma Abdoul Kader (son).

b) Proof of status of victim

51. Whereas, basically, apart from cases where marriage certificates have been adduced, and the Applicants in some cases produced the birth certificates of beneficiaries; or life

companion, or those determined by the Court based on the characteristics of the case and the existence of some special relationship between the next-of-kin and the victim or the facts of the case".

¹⁸ See *infra*, para. 54

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certificates; or at times both birth certificates and life certificates to establish their status as victim; or did not produce any document in support, the Respondent State submits that in conformity with extant national legislation, each beneficiary should produce not only the two above-mentioned documents at the same time, but also certificates of heredity.

52. The Court notes that according to Article 26 (2) of the Protocol establishing it, "the Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence". This provision which highlights the principle of free admissibility of evidence implies in particular that the Court is not limited by internal restrictive rules of law with regard to admissible evidence. It may therefore decide that a type of evidence required under domestic law is not necessarily required before it as an international court.

53. Along the same lines, it has been ruled that:

"This obligation to make reparations is regulated, in all its aspects [including the determination of beneficiaries] by international law, and cannot be modified by the respondent State nor can it fail to comply with it, invoking to this end provisions of its domestic law"¹⁹.

54. In the instant case, the Court is of the opinion that to establish their status as victim, the Applicants, natural persons, mentioned earlier (para 50) do not need to produce a certificate of heredity as required under Burkinabè law. As the Court noted earlier (para. 46), the relevant issue here is not to know whether or not a person is an heir but rather to know whether such a person is a recognized victim in light of international human rights law. In the view of the Court, spouses should produce only their marriage certificate and their life certificate or any other equivalent proof. As for the children, they only have to produce their birth certificate or any other equivalent evidence to show proof of their

¹⁹ IACHR: *Caracazo v. Venezuela*, (Reparations and Costs), Judgment of 29 August 2002 para 77: "This obligation to repair is, in all its aspects, [including the determination of the beneficiaries] governed by international law and cannot be changed by the Respondent State and the latter cannot avoid it by invoking the provisions of domestic law in this regard" [Registry translation]; See also: IACHR: *Montero-Artanguen and Others (Detention Center of Catia) v. Venezuela* (Preliminary Objections, Merits, Reparations and Costs), Judgment of 5 July 2006, para. 117.

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filiation, as well as their life certificate. Fathers and mothers must produce only an attestation of paternity or maternity as well as life certificate or any other equivalent proof.

c) *Proof of causal link between the wrongful act and the moral prejudice*

55. Regarding the causal link between the wrongful act and the moral prejudice suffered, the Court is of the opinion that such link may result from the violation of a human right, as an automatic consequence, without any need to prove otherwise. In the jurisprudence of the Inter-American Court, there is even a presumption in that regard. This Court has indeed declared that there is "a presumption according to which violations of human rights and a situation of impunity regarding those violations cause grief, anguish and sadness, both to the victims and to their next of kin"²⁰, and that in such circumstances no proof is required²¹

56. In the instant case, there is hardly any doubt that the close relatives of Norbert Zongo and his three companions suffered moral damage arising from the shortcomings ascribable to the Respondent State for having failed to apprehend, prosecute and bring to trial those responsible for the quadruple murder on 13 December 1998, and in particular the unduly prolonged procedure which in the end turned out to be fruitless (see Judgement of 28 March 2014, paras 152 to 156).

²⁰ IACHR: *Caracazo v. Venezuela*, Judgment of 29 August 2002, Reparations and Costs, para. 50: "... the presumption according to which violations of human rights and a situation of impunity regarding those violations cause grief, anguish and sadness, both to the victims and to their next of kin". See in this same regard: *Idem: Aloeboetoe v. Surinam*, (Reparations and Costs), Judgment of 10 September 1993, para 76; *Idem: Loayza Tamayo v. Peru* (Reparations and Costs) Judgment of 27 November 1998, para. 140; *Idem: Gonzalez Medina and Others v. Dominican Republic*, 27 February 2012 (Preliminary

Objections, Merits, Reparations and Costs) para. 270; *Idem: Myrna Mack v. Guatemala*, Judgment of 25 November 2003 (Merits, Reparations and Costs), para. 243.

²¹ IACHR: *Mapiripán Massacre v. Colombia*, (Merits, Reparations and Costs), Judgment of 15 September 2005, para. 146: "Beyond the above, in a case such as that of the Mapiripán massacre the Court deems that no evidence is required to prove the grave impact on the mental and emotional well-being of the next of kin of the victims."

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d) *The amount of reparations*

57. Whereas the Applicants are claiming lump sums of money in reparation for the moral prejudice suffered (*supra*, para 36), the Respondent State is insistent in establishing that none of the beneficiaries has justified his/her status either as beneficiary or indirect victim, and that none of them is therefore in a position to lay claim to any reparation (*supra*, para 43).

58. The Court first recalls that it has already disposed of this issue of persons who can lay claim to the status of victims in the instant case (*supra*, para. 50) and will not come back to it.

59. The Court further notes that the Respondent State does not contest the existence of moral prejudice to the detriment of the beneficiaries identified by the Court as the victims.

60. Regarding the quantification of reparation *per se*, the applicable principle is that of full reparation, commensurate with the prejudice suffered. As stated by the Permanent Court of International Justice in the above mentioned matter of *l'Usine de Chorzów (The Factory at Chorzów)*, the State responsible for violation needs to make an effort "to wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".²² In the same vein, the Inter-American Court of Human Rights stated that:

"Reparations consist of measures tending to eliminate the effects of the violations that have been committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage that has been caused. Reparations should not make the victims or their successors either richer or poorer and they should be proportionate to the violations declared in the judgment".²³

²² PCIJ: *The Factory at Chorzów*, (Merits), Judgment of 13 September 1928, Series A, No. 17, p. 47.

²³ IACHR: *Goiburú and Others v. Paraguay*, (Merits, Reparations and Costs), Judgment of 22 September 2006, para. 143: "Reparation consists of measures tending to eliminate the effects of the violations that have been committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage that has been caused. Reparations should not make the victims or their successors either richer or poorer and they should be proportionate to the violations declared in the judgment." See also: *Idem: Castillo – Paez v. Peru* (Reparations and Costs) Judgment of 27 November 1998, para 51; IACHR "*Enfants de la rue*" (*Villagran-Morales and Others*) *v. Guatemala* (Reparations and Costs), Judgment of 26 May 2001, para 63; *Idem: Gonzales and Others ("Cotton Field") v. Mexico* (Preliminary Objections, Merits, Reparations

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61. With regard in particular to determination of the amounts for pecuniary reparation of a moral prejudice, it is admitted that the determination should be done equitably taking into account the specific circumstances of each case. As stated by the Inter-American Court of Human Rights:

"Since it is not possible to allocate a precise monetary equivalent for non-pecuniary damage, it can only be compensated, in order to provide comprehensive reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court determines by the reasonable exercise of judicial discretion and based on the principle of equity..."²⁴

62. In the instant case, the Court notes in particular that the lump sum amounts submitted by the Applicants for each victim have not been formally contested by the Respondent State. In the circumstances, the Court, on grounds of equity, and considering that the sufferings of the victims concerned occurred over many years (*supra* paras 3 to 7) does not see any reason why the said amounts should not be awarded as they are. The Court therefore grants the claims for reparation for moral prejudice suffered by the victims identified in paragraph 50 above, who would have to furnish the proof mentioned in paragraph 54 above, that is: 25 million CFA F per spouse, 15 million per child, and 10

and Costs), Judgment of 16 November 2009, paras 450 and 451; see also *HCHR Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violation of international human rights law and serious violations of international humanitarian law*, Resolution 60/147 adopted by the General Assembly on 16 December 2005, Principle 15.

²⁴ IACHR: *Case of Goiburú et al. v. Paraguay*, (Merits, Reparations and Costs), Judgment of 22 September 2006 para. 156; "Since it is not possible to allocate a precise monetary equivalent for non-pecuniary damage, it can only be compensated, in order to provide comprehensive reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court determines by the reasonable exercise of judicial discretion and based on the principle of equity". See also: IACHR: "*Enfants de la rue*" (*Villagran-Morales and Others v. Guatemala*, (Reparations and Costs) Judgment of 26 May 2001 para.84; IACHR: *Cantoral-Benavides v. Peru* (Reparations and Costs), Judgment of 3 December 2001, para. 53; ECHR: *Varnava and Others v. Turkey*, Judgment of 18 September 2009, GC, para. 224 : " The Court's guiding principle is equity, which above all, involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred". ECHR: *Al Jedda v. U.K.*, Judgment, GC, of 7 July 2011, para. 114.

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million per father or mother. In the same vein, the Court dismisses the claims for reparation for moral prejudice submitted for the other persons listed by the Applicants, namely: step-mothers, uterine sisters and brothers, and step sisters and step brothers.

2) The Burkinabè Movement on Human and Peoples' Rights (MBDHP)

63. In their Brief on Reparations, the Applicants stated that the MBDHP "...claims from Burkina Faso a token amount for the damage caused to it for its involvement in the search for the truth..."

64. In its Brief in Response, the Respondent State indicated that it "finds no inconvenience with paying" the token 1 CFA F "for the moral damage" [the MBDHP] "had suffered".

65. The Court accepts, firstly, that a legal entity can suffer a moral prejudice²⁵. In the instant case, this prejudice may have resulted from the frustrations experienced for years by the MBDHP on account of the inconclusiveness of the action of apprehending, prosecuting and bringing to trial the assassins of Norbert Zongo and his companions.

66 In this regard, the Court is further of the opinion that in line with international practice²⁶, the findings in its aforementioned Judgment of 28 March 2014 regarding the violation of the Charter by the Respondent State, already constitutes in itself a form of reparation for the moral prejudice suffered by the MBDHP.

²⁵ See on this score: ECHR: *Comingersoll S.A v. Portugal*, Judgment of 6 April 2000 para 35: "In light of its own case-law and that practice, the Court cannot (therefore) exclude the possibility that a commercial company may be awarded pecuniary compensation for non-pecuniary damage"; *Idem: Parti de la liberté et de la démocratie (Ozdep) v. Turkey*, Judgment of 8 December 1999, paras 55 to 57.

²⁶ IACHR: *El Amparo v. Venezuela* (Reparations and Costs), Judgement of 14 September 1996, para. 35; IACHR, *Neira Alegria and Others v. Peru* (Reparations and Costs) Judgment of 19 September 1996, para. 56; IACHR: *Montero-Artanguren and Others (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 131: "Judgments, pursuant to repeated international precedents, constitute in and of themselves a form of reparation"; ECHR: *Varnava and Others v. Turkey*, Judgment of 18 September 2009, GC, para. 224; ICJ: *United Kingdom v. Albania (Strait of Corfu)*, Merits, Judgment of 9 April 1949, *Compendium* 1949, p. 36.



67. Furthermore, in the special circumstances of this case, whereby the Respondent State has not raised any objection, the Court does not see any reason as to why it should not grant the symbolic reparation claimed by MBDHP as reparation for the moral prejudice it suffered. Accordingly, the Court further grants the claim made by the Applicants for one (1) symbolic CFA Franc to be paid to MBDHP.

C. Claims for reparation for material prejudice

68. In their Brief on Reparations and, once again, in regard to MBDHP, the Applicants claimed "reimbursement of the expenses incurred between 1998 and 2013, for organizing demonstrations, particularly the International Day Against Impunity organized on 13 December of each year, both to force the authorities to track down the perpetrators of the assassination of the journalist and his companions and to rally the people of Burkina Faso to support the families of the beneficiaries", that is, the amount of forty-five million seven hundred and thirty-four thousand seven hundred and five (45,734,705) CFA F .

69. Furthermore, in their letter dated 17 November 2014 submitted in Response, the Applicants rejected the claim according to which "the State of Burkina Faso contributes financially and yearly to the functioning of the MBDHP [Burkinabè Movement on Human and Peoples' Rights] just like other associations". According to them, since its creation on 19 February 1989, the MBDHP has never received any financial contribution whatsoever from the authorities.

70. In its Brief in Response, the Respondent State argued that the claim for reimbursement of the costs incurred for organising demonstrations has no material or legal grounds, for the following reasons:

(i) the MBDHP has been existing well before the matter of Norbert Zongo and has organized demonstrations not related to this matter;

(ii) Burkina Faso contributes financially and yearly to the running of the *MBDHP*, like other associations²⁷;

²⁷ As earlier indicated (para. 69), the Applicants categorically reject this allegation.

(iii) the demonstrations in question were organised in conjunction with other organisations in a forum called "Group of mass organizations and political parties", and did not therefore constitute actions specific and peculiar to MBDHP;

(iv) the said demonstrations had always been directed against impunity in general and not solely in favour of the "Norbert Zongo" case;

(v) the MBDHP did not present any document attesting to the costs that it claimed to have incurred to hold demonstrations, and did not even indicate when the said demonstrations took place.

Consequently, the Respondent State prayed the Court, on grounds of the aforesaid, to throw out MBDHP's request for reimbursement of the said costs as "fake and groundless."

71. The Court recalls that the Burkinabè Movement on Human and Peoples' Rights is, as the name indicates, a human and peoples' rights advocacy organisation in Burkina Faso. It is therefore evident that the organization of human rights advocacy demonstrations in that country, including for the rights of the beneficiaries of Norbert Zongo and his companions, falls within its mandate and the ambit of its normal activities.

72. For this reason, the Court is of the opinion that there is no basis to grant the claim for reimbursement of the costs incurred by MBDHP in organising human rights advocacy demonstrations, including those in favour of the Applicants in the instant case.

VI. EXPENDITURE AND COSTS INCURRED BY THE BENEFICIARIES

73. Under this heading, the Applicants are asking the Respondent State to reimburse not only lawyers' fees but also the expenses incurred for transport to the Seat of the Court.

A) Lawyers' fees

74. In their Brief on Reparations, the Applicants submit that reimbursement of the expenses incurred at both the national and international levels in the quest for justice is one of the appropriate measures prescribed by Article 27(2) of the Protocol establishing

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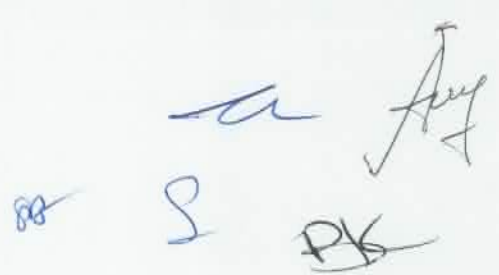
the Court [para 17]. They argue that “these are mostly the charges and fees of Counsel for the beneficiaries and of the *MBDHP* during the entire juridical procedure in Burkina Faso and in Tanzania” [at the Seat of the Court].

75. According to the Applicants, “the fees include: the total amount owed by the client to the Counsel for services rendered by the latter; the costs and outlay corresponding to the costs indicated by Counsel in accomplishing his mission, and outlay paid on behalf of the client ...; emoluments corresponding to taxes and charges received by Counsel for procedural acts, in accordance with tariff fixed by the instruments in force”.

76. The Applicants submit that their Counsel have been working on the case since 1999 “with all political, financial, moral, etc.) toll it has taken on them” and therefore prayed the Court “to arbitrate these fees to the sum of twenty-five (25) million CFA F exclusive of related taxes and emoluments.”

77. In the Corrigendum on the Reparations, the Applicants however indicate that the figures contained in the Brief are inexact because they do not conform to the agreements signed between the two lawyers and the beneficiaries in 2010, based on the Indicative Scale of Costs and Fees of Lawyers of Burkina Faso. Consequently, they pray the Court “to adjudicate these fees at the sum of twenty-five million (25) CFA F per family, subject to the related taxes and emoluments as had been approved by them”...thus bringing “the total sum to a hundred (100) million CFA F”.

78. In its Brief in Response, the Respondent State, after analysing the Indicative Scale of Costs and Fees of Lawyers of Burkina Faso submitted by the Applicants, argued that the Agreements on lawyers' fees referred to by the Applicants, “are complaisant as they do not state the well-known fees”. It further argues that lawyers' fees are part of damages, which in its view, are the only claims made by the Applicants in the instant case; but argues that if, by an unlikely chance, the Court agrees that the Counsel fees for the Applicants are part of damages, then “the sum of twenty-five (25) million claimed by the said Counsel for each victim's family is exorbitant and out of proportion with the socio-economic realities of Burkina Faso”. The Respondent State “believes that the sum of



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20,000,000 CFA F that is, 5,000,000 per family would be a fair remuneration for the lawyers of the victims”.

79. In the opinion of the Court, the reparation paid to victims of human rights violation may also include the reimbursement of lawyers’ fees. This was the position held by the Court in the afore-cited case of *Rev. Mtkila v. United Republic of Tanzania*:

“The Court notes that expenses and costs form part of the concept of ‘reparations’. Therefore, where the international responsibility of a State is established in a declaratory judgment, the Court may order the State to compensate the victim for expenditure and costs incurred in his or her efforts to obtain justice at the national and international levels”²⁸

80. This position is consistent with that of other international human rights jurisdictions. The Inter-American Court of Human Rights, for example, expressed this position in the following terms:

“...costs and expenses are included in the concept of reparations ... because the activity deployed by the next-of-kin of the victims or their representatives in order to obtain justice at both the national and the international level entails expenditure that must be compensated when the State’s international responsibility is declared in a judgment against it.”²⁹

81. In determining the amount to be paid in the matter of *Rev. Mtkila* mentioned above, the Court has held that in the opinion of the Court, the reparation paid to victims of human rights violation may also include the reimbursement of lawyers’ fees.³⁰

²⁸ Judgment of 13 June 2014, para 39

²⁹ IACHR: *Goiburú and Others. v. Paraguay*, Judgment of 22 September 2006 (Merits, Reparations and Costs), para. 180: “...costs and expenses are included in the concept of reparations... because the activity deployed by the next of kin of the victims or their representatives in order to obtain justice at both the national and the international level entails expenditure that must be compensated when the State’s international responsibility is declared in a judgment against it”. See also: IACHR: *Caballero-Deigado and Santana v. Colombia*, (Merits), Judgment of 8 December 1995), para 71; IACHR: *Garrido and Baigorria v. Argentina* (Reparations and Costs), Judgment of 27 August 1998, para. 79: “Costs are one element to be considered under the concept of reparations to which Article 63(1) of the Convention refers since they are a natural consequence of the effort made by the victim, his or her beneficiaries, or representatives to obtain a court settlement recognizing the violation committed and establishing its legal consequences”; IACHR: *Loayza Tomayo v. Peru*, (Reparations and Costs) Judgment of 27 November 1998, para 176; IACHR : *Cesti Hurtado v. Peru* (Reparations and Costs) Judgment of 31 May 2001, para. 72.

³⁰ *Mtkila v. United Republic of Tanzania*, Judgment of 13 June 2014, para 40

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82. This is also the position of the Inter-American Court of Human Rights which, in a matter, declared that:

"... the Court considers that it is not sufficient to remit probative documents; rather the parties must develop the reasoning that relates the evidence to the fact under consideration, and, in the case of alleged financial disbursements, the items and their justification must be described clearly."³¹

83. In the instant case, the Applicants presented an extract of the Indicative Scale of Costs and Fees of Lawyers of Burkina Faso dated 20 December 2003 as well as the fees agreements signed with the lawyers in 2010.

84. If we take the Indicative Scale into account, it becomes apparent that the lawyers would be entitled to 150,000 CFA F for opening the case; 150,000 CFA F for legal assistance and representation; 25,000 per session before the Court of First Instance; 350,000 for legal assistance and representation before the Court of Appeal and a percentage of the amount of the reparation which would have been paid to the victims in the civil suit. Considering that in the instant case no civil damages were paid to the victims by the domestic jurisdictions, it would not be possible to set with clarity, any global amount based on the Indicative Scale.

85. Going by the fees agreements, the lawyers would be entitled to 250,000 CFA F for the opening of the case, and 25,000,000 for their legal assistance and representation. This will give 25,250,000 CFA F per family, or a total of 101,000, 000 CFA F which the Applicants have rounded up at 100,000,000 CFA F.

86. In the opinion of the Court, the amount calculated on the basis of the Indicative Scale would be too low if account is taken, *inter alia*, of the difficulties the lawyers must have faced during the domestic proceedings, especially on account of the length of the

³¹ IACHR: *Chaparro Alvarez and Lapo Iñiguez v. Ecuador* (Preliminary Objections, Merits, Reparations and Costs) Judgment of 21 November 2007 para. 277; See also: ECHR *Sahin v. Germany*, Judgement of 8 July 2003, para. 105: "Costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are also reasonable as to the quantum Furthermore, legal costs are only recoverable in so far as they relate to the violation found."

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proceedings and the highly political sensitivity of the case; and also when we take into consideration the qualitative requirements of the procedure before an international court³². The Respondent State itself admits that a global amount of nearly twelve times higher, that is, 20,000,000 CFA F would be reasonable. On the other hand, the amount of 100,000,000 CFA F based on the lawyers' fees agreement seems to be too high in the circumstances, particularly if account is taken of the fact that there was only one matter for the four families.

87. In the circumstances, the Court has to determine the amount of lawyer's fees on the basis of equity, going by what it considers reasonable in each case³³. In its opinion, in the instant case, and considering both the amounts set by the Indicative Scale, the amounts stipulated in the fees agreement and the amounts proposed by the Respondent State itself, a total lump sum comprising expenses and lawyers' fees in the amount of 40 million would be equitable and reasonable.

B) Transport and sojourn expenses at the Seat of the Court

88. In their Brief on Reparations, the Applicants once again argue that reimbursement of transport and sojourn expenses for their Counsel and the representative of MBDHP in Arusha for their participation in the public hearing of the African Court forms part of the appropriate orders of reparation prescribed in Article 27 of the Protocol establishing the

³² See IACHR: *Garrido and Baigorria v. Argentina* (Reparations and Costs) Judgment of 27 August 1998, para. 83: "There are... important factors to be weighed when assessing the performance of the attorneys in a proceeding before an international tribunal, such as the evidence introduced to demonstrate the facts alleged, full knowledge of international jurisprudence and, in general, everything that would demonstrate the quality and relevance of the work performed."

³³ See in particular: IACHR: *Garrido and Baigorria v. Argentina* (Reparations and Costs) Judgment of 27 August 1998, para. 80; IACHR: *Constitutional Court v. Peru* (Merits, Reparations and Costs) Judgment of 31 January 2001, para. 125; IACHR: *"White Van" (Paniagua-Morales and Others) v. Guatemala* (Reparations) Judgment of 25 May 2001, para. 213; IACHR: *Cesti Hurtado v. Peru* (Reparations and Costs) Judgment of 31 May 2001, para. 72; IACHR: *Goiburú and Others v. Paraguay*, (Merits, Reparations and Costs), Judgment of 22 September 2006 para. 180: "This assessment [of expenses and costs] may be based on the principle of equity and taking into account the expenses indicated by the parties, provided the *quantum* is reasonable"; cf. ECHR: *Thomas v. United Kingdom*, Judgment of 17 July 2008, para. 32: "The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to *quantum* are recoverable under Article 41 of the Convention".



Court. The said expenses are in respect of the travels made between March and November 2013 for the purpose of attending the public hearings of the Court, and the Applicants estimate the said expenses at seven million two hundred thousand (7,200,000) CFA F.

89. However, in their Corrigendum to the Brief on Reparations, the Applicants reduced this amount to six million five hundred and forty-two thousand five hundred (6,542,500) CFA F.

90. In its Brief in Response, the Respondent State submits that the transport and sojourn costs in Arusha incurred to follow the proceedings should have been supported by documents issued by the transport companies, hotels and restaurants, and that it leaves the determination of the right amount to the wisdom of the Court, considering that the said costs are not mentioned in the lawyers' fees agreements.

91. The Court is of the opinion that the reparation payable to the victims of human rights violation can also include reimbursement of the transport fares and sojourn expenses incurred for the purposes of the case by their representatives at the Seat of the Court.³⁴

92. The Court notes that, in the instant case, the Parties do agree on the principle of reimbursement of transport fares and sojourn expenses in Arusha for the representatives of the Applicants. The Court further notes that the Applicants produced written documents aimed at substantiating the amounts claimed. It however finds that the Applicants did not submit a complete set of the supporting materials (*supra*, para. 16).

93. The Court is of the opinion that, with regard to reimbursement of the expenses actually incurred, only the expenses supported by proof of payment such as receipts or equivalent documents can be considered for the purposes of reparation.

94. Based on the aforesaid, it is apparent from the records that the travel and sojourn costs to be reimbursed are in the amount of US\$1,106 for Mrs. Genevieve Poda Zongo, spouse of Norbert Zongo; US\$1,106 for Chrysogne Zougmore, President of MBDHP; US\$1,106 for Advocate Benewende Stanislas Sankara, Counsel; US\$ 1, 827.37 for

³⁴ See *supra*, notes 28 and 29.

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Advocate Ibrahima Kane, Counsel; and US\$50 for Prosper Farama, Counsel. The Court therefore grants the claim for reimbursement in favour of the Applicants in the total amount of US\$5,195,37 equivalent to 3,135,405.80 CFA F at Central Bank of West African States (BCEAO) rate.

VII. MEASURES OF SATISFACTION AND GUARANTEES OF NON- REPETITION

A) Measure of satisfaction: publication of the Court's decision

95. In their Brief on Reparations, the Applicants prayed the Court to order "the publication of [its] Judgment in the Official Gazette, the national Daily *Sidwaya* and two of the most read private newspapers in the country, in order that the national public opinion, particularly judicial authorities and security officials [might] be aware of the wrong caused to the State and its human rights protection system by the poor functioning of its public justice and security services".

96. In its Brief in Response, the Respondent State noted that, in principle, it finds no inconvenience with publishing the Court's decision, but argued that in international human rights law, "measures of satisfaction should not lead to humiliation of the State against which human rights violations had been established". It submitted further that, in the instant case, the reasons given by the Applicants in support of their request for publication "are motivated more by a desire to humiliate the State of Burkina Faso and tarnish its image, than promoting and protecting human rights". The Respondent State therefore prays the Court to reject the measure of satisfaction and guarantees of non-repetition as requested by the indirect victims as inadequate and irrelevant.

97. The Court notes that the principle itself of publication of the Court's decision is not in dispute between the parties.

98. The Court also notes that the publication of decisions of international human rights courts as a measure of satisfaction is of current practice³⁵. Thus, in the case of *Rev.*

³⁵ See in particular: IACHR: *Massacre du Plan de Sanchez v. Guatemala*, (Reparations) Judgment of 19 November 2004, paras 102 and 103; IACHR: *Heliodoro Portugal v. Panama* (Preliminary Objections, Merits, Reparations and Costs), Judgment of 12 August 2004, para. 248.

Christopher Mtkila v. United Republic of Tanzania, the Court itself decided *proprio motu* to order the publication of one of its decisions as a measure of satisfaction.³⁶

99. The Court further notes that measures regarding the publication of its decision, if couched in reasonable terms, will not in any way amount to humiliation for the Respondent State.

100. Relying on its own jurisprudence afore-mentioned (*supra*, para. 98), the Court is of the opinion that as a measure of satisfaction, the Respondent State should, within six months from the date of this Judgment, publish: (i) the official summary of this Judgment drafted by the Registry of the Court in French, once in the official gazette, and once in a widely read national Daily; (ii) the same summary on an official internet website of the Respondent State, and maintain the publication for one year.

B) "Guarantees of non-repetition"

101. In their Brief on Reparations regarding what they characterize as "guarantees of non-repetition", the Applicants prayed the Court to order "the re-opening of investigations so that the perpetrators of the assassination may be apprehended and brought before national courts", and "to order Burkinabè authorities to submit [to the Court], all information concerning the initiatives taken to that effect within six (6) months".

102. In its Brief in Response, still basing its argument on humiliation, the Respondent State indicates that "exacting the immediate resumption of investigations and production within a time limit of six months, of all information on measures taken to that effect, is contemptuous to the provisions of the Criminal Procedure Code of Burkina Faso", specifically Articles 188 and 189³⁷ thereof. It further argues that "it continues to make

³⁶ Judgment of 13 June 2014, paragraphs 45 and 46 (5).

³⁷ These provisions read as follows: Article 188: "the indicted person whose case the investigating magistrate has ruled should not continue can no longer be pursued on the basis of the same facts unless new evidence is discovered; Article 189: considered as new charges are: witness statements, documents and reports, which having not been submitted for consideration by the investigating Magistrate are however likely to back up the charges which would have been considered too weak, i.e. to provide facts regarding new developments useful in determining the truth" (Registry translation).



the commitment that, as soon as new facts or new charges will be discovered in terms of the above mentioned provisions of the Criminal Procedure Code, it will reopen investigation as long as the 10 (ten) years prescription provided for crimes would not have elapsed”.

103. On the application for resumption of investigations into the murder of Norbert Zongo and his three companions, the Court notes that this is not really a measure of non-repetition, but rather one of cessation of a violation already established.

104. Be that as it may, the Court is of the opinion that this is indeed a legitimate measure likely to forestall the continued violation of Article 7 of the Charter in this case.

105. This position is consistent with the jurisprudence of some international courts. For instance, the Human Rights Committee held the view in a case that:

“The State party should investigate the events complained of and bring to justice those held responsible for the author’s treatment; it further is under an obligation to take effective measures to ensure that similar violations do not occur in the future.”³⁸

106. For its part, the African Commission on Human and Peoples’ Rights frequently recommends to States to take certain measures to prevent a repetition of the violations it has established. In the matter of *Gabriel Shumba v. Zimbabwe*, for example, it recommends “that an enquiry and investigation be carried out to bring those who perpetrated the violations to justice”.³⁹

³⁸ The Committee on Human Rights: *M’Boissona v. Central African Republic (for François Bozizé)*, Decision of 7 April 1994, Communication No. 428/1990, para 7.

³⁹ ACHPR: Communication 288/04, *Gabriel Shumba v. Zimbabwe*, 51st Session, 2 May 2012, para. 194 (2): “that an inquiry and investigation be carried out to bring those who perpetrated the violations to justice.”; See in this regard *Idem*: Communications 54/91-61/91-98/93-164/97-196/97-210/98, *Malawi Africa Association, Amnesty International, Ms Sarr Diop, Inter African Union of Human Rights and RADDHO, Group of widows and beneficiaries, Mauritanian Human Rights Association v. Mauritania*, 27th Session, 11 May 2000, the operative section; Communication 241/01, *Purohit and Moore v. The Gambia*, 33rd Session, 29 May 2003, the operative section; Communication 279/03-296/05, *Sudan Human Rights Organization and Centre on Housing Rights and Evictions (COHRE) v. Sudan*, 45th Session, 27 May 2009, the operative section; AFCHPR: Communication 236/00, *Curtis Francis Doebbler v. Sudan*, 46th Session, 25 November 2009, the operative section; Communication 334/06, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, 9th Extraordinary session, 1 March 2011, the operative section.

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107. The Court is further of the opinion that such a measure hardly amounts to contempt of Burkinabè legislation, since all it does is to offer the possibility of reopening investigations after the matter had been dismissed by the national court for lack of evidence; and the Respondent State itself is disposed to the reopening of investigations into the matter (*supra*, para. 102).

108. The Court would also like to emphasize that whereas it may indeed order the State to adopt certain measures, the Court does not however deem it necessary to indicate to the State how it should comply with the Court's decision, that being left to the discretion of the said State.

109. Based on the foregoing considerations, the Court grants the Applicants' request to order the Respondent State to reopen investigations with a view to prosecute and bring to trial the perpetrators of the murder of Norbert Zongo and his three companions, and thus shed light on this matter and do justice to the families of the victims.

110. On the Applicant's request to require the Respondent State to furnish all information concerning the measures taken in this respect within six months, the Court is of the opinion that it is not necessary to set a specific time limit for implementation of the measures in question, considering that it will determine later (*infra*, para 111) the time limit within which the Respondent State should notify the Court of its execution of all the measures it would have taken in the instant case.

111. *For these reasons,*

THE COURT:

- (i) Unanimously
Decides, with regard to the moral prejudice suffered by the Applicants natural persons in the instant case, that only the spouse, the sons and daughters, and the fathers and mothers of the deceased persons mentioned in paragraph 50 of this Judgment are entitled to reparation;
- (ii) Unanimously

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Orders the Respondent State, in consequence, to pay twenty-five (25) million CFA F to each spouse; fifteen (15) million CFA F to each son and daughter; and ten (10) million CFA F to each father and mother concerned;

(iii) Unanimously

Declares that for the purposes of the payments prescribed in the preceding paragraph, the following documents must be presented by the Applicants to the competent Burkinabè authorities: marriage certificate and life certificate or any other equivalent proof for the spouse; birth certificate and life certificate or any other equivalent proof for the sons and daughters; attestation of paternity or of maternity, and a life certificate or any other equivalent proof for the fathers and mothers;

(iv) Unanimously,

Declares that the Judgment of 28 March 2014 on this matter represents a form of reparation for the moral prejudice suffered by the Burkinabè Movement on Human and Peoples' Rights (MBDHP); and *orders* the Respondent State in addition to pay a token sum of one (1) CFA F to the MBDHP, as reparation for the said prejudice;

(v) Unanimously,

Dismisses the claim made by the MBDHP for compensation for having organized human rights demonstrations regularly, including demonstrations for the Applicants;

(vi) Unanimously

Orders the Respondent State to pay the Applicants the sum of forty (40) million CFA F being the fees owed to their Counsel;

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- (vii) Unanimously
Orders the Respondent State to reimburse the Applicants the out-of-pocket expenses incurred by their Counsel during their stay at the Seat of the Court in Arusha in March and November 2013, in the amount of three million one hundred and thirty-five thousand, four hundred and five CFA F and eighty cents (3,135,405.80);
- (viii) Unanimously
Orders the Respondent State to pay all the amounts mentioned in subparagraphs (ii), (iv), (vi) and (vii) of this paragraph within six months as of today, failing which interest will accrue for delayed payment, calculated at the rate applicable at the Central Bank of the Community of West African States (BCEAO), for the entire duration of the delay until the full payment of the amounts owed;
- (ix) Unanimously
Orders the Respondent State to publish within six (6) months of the date of this Judgment: (a) the summary of this Judgment in French drafted by the Registry of the Court, once in the Official Gazette of Burkina Faso and once in a widely read national Daily; (b) the same summary on the website of the Respondent State and retain the publication on the said website for one year;
- (x) By ten votes to one, Judge Tambala dissenting,
Orders the Respondent State to reopen investigations with a view to apprehend, prosecute and bring to justice the perpetrators of the assassination of Norbert Zongo and his three companions;

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(xi)

Unanimously

Orders the Respondent State to submit to it within six months effective from this day, a report on the status of compliance with all the Orders contained in this Judgment.

Signed:

Augustino S.L. RAMADHANI, President

Elsie N. THOMPSON, Vice-President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Duncan TAMBALA, Judge

Sylvain ORE, Judge

El Hadji GUISSSE, Judge

Ben KIOKO, Judge

Rafâa BEN ACHOUR, Judge

Solomy B. BOSSA, Judge

Angelo V. MATUSSE, Judge; and

Robert ENO, Registrar.



Done at Arusha, this Fifth Day of the Month of June of the Year Two Thousand and Fifteen in English and French, the French version being authoritative.