

PUBLIC HEARING OF EIGHTEEN (18)  
DECEMBER TWO THOUSAND AND  
THIRTEEN (2013)

Action for apprehension of legality

- State of Côte d'Ivoire  
- Mr Laurent Gbagbo (Mr  
Claude MENTENON  
Mohamed Lamine FAYE)

Against

- The WAEMU Council of Ministers  
- The UEMOA Commission  
(Me Harouna SAWADOGO)

Composition of the Court :

Daniel L. FERREIRA, Chairman -  
Rapporteur ;  
Mr Ousinane DIAKITE, Judge;  
Honorat ADJOVI, Judge;  
Maty ELHADJI Moussa, Judge ;  
Mrs Léontine M. F. ZOMBRE ZIDA,  
Judge ;

Ms Seynabou NDIAYE DI AKHATE,  
First Advocate General ;

Fanvongo SORO, Registrar ;

The Court of Justice of the WAEMU, meeting in  
ordinary session on eighteen (18) December two  
thousand and thirteen (2013), in which were seated  
:

Mr Daniel Lopes FERREIRA, President of the  
Court, Chairman-Rapporteur ;

Mr Ousmane DIAKITE, Mr Honorat ADJOVI, Mr  
Maty ELHADJI Moussa and **Mrs Léontine Marie  
Florence ZOMBRE ZIDA**, Judges, Members;

in the presence of Ms Seynabou NDIAYE  
DIAKHATE, First Advocate General;

with the assistance of Maitre Fanvongo SORO,  
Clerk ;

has rendered the following judgment :

BETWEEN :

1. The State of Côte d'Ivoire, having as its agent  
Mr Beugrè Claude YAO,
2. Mr Laurent GBAGBO, born on 31 May  
1945 in Babré (Ivory Coast), of Ivorian  
nationality, acting in his personal name as  
President of the Republic of Ivory Coast;

Having both for advice

Maître Claude MENTENON, Lawyer at the  
Côte d'Ivoire Bar, residing at Plateau 25,  
Avenue Chardy, Immeuble Chardy (UAP)  
Entresol, 04 BP 382 Abidjan 04, Tel.  
(00225) 20 22 22 50 - Fax (00225) 20 22 22  
42, in whose study the applicants elect  
domicile ;

- Maître Mohamed Lamine FAYE, Avocat au Barreau de Côte d'Ivoire y demeurant Avenue du Général dC Gaulle au Plateau, Résidence du front lagunalre, escalier A, 2<sup>ème</sup> étage, 01 BP 265 Abidjan 01,

**Plaintiffs, on the one hand ;**

AND

1. The **WAEMU Council of Ministers,**

2. **The WAEMU Commission,**

With Mr Eugène KPOTA, Technical Adviser to the President of the Commission, as Agent, assisted by Maître Harouna SAWADOGO, Barrister at the Burkina Bar, 01 BP 4091 Ouagadougou 01,

**Defendants, on the other hand ;**

## THE COURT

HAVING REGARD TO the application dated eleven (11) January two thousand and eleven (2011), registered at the Court Registry on the same day under No. 11 R001, by which the State of Côte d'Ivoire represented by Mr Laurent GBAGBO in his capacity as President of the Republic and Mr Laurent GBAGBO, both of whom were advised by Maître Claude MENTENON and Maître Mohamed Lamine FAYE, lawyers at the Côte d'Ivoire Bar, with an address for service at the chambers of Maître Claude MENTENON, have brought an action before the Court of Justice of the WAEMU for annulment of the decision of the Council of Ministers of the WAEMU of 23 December 2010 and, consequently, for an injunction requiring the authorities of the WAEMU to respect the freedom, independence and sovereignty of the Republic of Côte d'Ivoire and to comply with the general principles and formal provisions of the legal instruments governing the Union;

HAVING REGARD TO the letter of thirteen (13) January two thousand and eleven (2011) by which the Registrar of the Court requested Maître Claude MENTENON, Counsel for the applicants, to produce by way of regularisation the decision of the Council of Ministers the annulment of which is sought, to complete the application with a view to bringing it into conformity with the requirements of Article 26 paragraph 2 of Regulation No 01/96/CM on the Rules of Procedure of the Court and, finally, to substantiate his application

constitution and the regular registration of lawyers at the Côte d'Ivoire Bar;

HAVING REGARD TO letters S No 02/2011 and S No 03/2011 of eleven (11) January two thousand and eleven (2011) by which the Registrar of the Court served on the Council of Ministers and the WAEMU Commission the initial application and the supplementary statement of case lodged by way of regularisation;

HAVING REGARD TO the letter of seven (07) March two thousand and eleven (2011), registered at the Court on nine (09) March two thousand and eleven (2011) under number 11.R001.3, from the President of the WAEMU Commission, informing the Court of the appointment of Mr Eugène KPOTA, Director of Cabinet of the President of the Commission, by interim, as agent of the said Commission in the present case;

DU les lettres des sept (07) et dix (10) mars deux mil onze (2011), enregistrées à la Cour les neuf (09) et dix (10) mars deux mil onze (2011) sous les numéros 11.R001.4 et 11.R001.6 du Président de la Commission de l'UEMOA et de Maître Harouna SAWADOGO du Cabinet Harouna SAWADOGO, portant constitution de Maître Harouna SAWADOGO, Avocat inscrit au barreau du Burkina Faso pour assister l'agent de la Commission;

HAVING REGARD TO the order dated fourteen (14) March two thousand and eleven (2011) of the President of the Court, granting Maître Harouna SAWADOGO, at his request, additional time to produce his statement of defence;

HAVING REGARD TO the statement of defence filed on 31 March 2011 by Maître Harou SAWADOGO, acting in the name and on behalf of the defendants;

HAVING REGARD TO the other documents

produced and attached to the file; HAVING

REGARD TO Article 38 of the UEMOA Treaty,

HAVING REGARD TO Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

HAVING REGARD TO the Additional Act n° 10/96 of ten (10) May one thousand nine hundred and ninety-six (1996) on the Statutes of the WAEMU Court of Justice,

HAVING REGARD TO Regulation n°01/96/CM of five (05) July one thousand nine hundred and ninety-six (1996) on the Rules of Procedure of the WAEMU Court of Justice;

HAVING REGARD TO Regulation n°01/2012/CJ of Twenty-one (21) December two thousand and twelve (2012) on the Administrative Rules of the Court of Justice of the WAEMU ,

HAVING REGARD TO Order No III/2013/CJ of eleven (11) November two thousand and thirteen (2013) appointing the members of the full Court to sit at the ordinary public hearing on dlx-huit (18) december two thousand and thirteen (2013) ;

HAVING REGARD TO the summonses sent to the parties;

YES Mr Daniel Lopes FERREIRA, Chairman-Rapporteur, in his report ;

HEARD Mr Claude MENTENON and Mr Mohamed Lamine FAYE, lawyers for the State of Côte d'Ivoire, represented by Mr Laurent GBAGBO in his capacity as President of the Republic, and Mr Laurent GBAGBO, in his capacity as President of the Republic of Côte d'Ivoire, in their oral observations,

**HEARD** Mr Eugène KPO "fA, Agent of the Commission, in his oral observations;

HEARD Mr Harouna SAWADOGO, Counsel for the defendants, in his oral observations,

**HAVING** heard the Opinion of Ms Seynabou NDIAYE DIAKHATE, First Advocate General;

Having deliberated in accordance with Community law ;

## **I. FACTS AND PROCEDURE**

**Considering** that the facts of the case as set out **by** the applicants are as follows

Pursuant to decree no. 2010-207 of five (05) August two thousand and ten (2010), the electoral college of the Republic of Côte d'Ivoire was convened on Sunday thirty-one (31) October two thousand and ten (2010) for the purpose of electing the President of the Republic; en vemi du décret n°2010-30 l du neuf (09) novembre deux mil dix (2010), le même collège électoral a été convoqué le dimanche vingt-huit (28) novembre deux mil dix (2010) en vue du second tour de ( élection présidentielle, à l'issue du scrutin du sec0nd tour et en violation totsle des dispositions légales, notamment l'article 59 nouveau de l'ordonnance n° 2008-133 du quatoye (14) avril deux mil huit (2008) portant ajustement du code électoral pour les élections de sortie de crise, le Président de la Commission Electorale Indépendante (CEI), le deux (02) décembre 2010, hors la présence des Commissaires centraux et des représentants des candidats et au-delà du délai imparti, a procédé tout seul, à la proclamation de résultats dits dits dites provisoires, sur les ondes étrangères de la chaine française France 24, à l'Hôtel du Golf, domicile de campagne du candidat Monsieur Alassane Ouattara, donnant celui-ci vainqueur.

The other candidate, Mr Laurent GBAGBO, appealed to the Constitutional Council to annul the results in several constituencies. By judgment no. CI-2010 dated three



(03) December two thousand and ten (2010), the Constitutional Council, ruling in accordance with the combined provisions of Article 94 in fine of the Constitution of the Republic of Côte d'Ivoire and Article 63 of Law No. 2000-5 14 of 1 August 2000 on the Electoral Code, declared the final result of the said election to be that of Mr Laurent Gbagbo with 51.45% of the votes cast in the second round of this election. In the meantime, the Representative of the Secretary General of the United Nations Organisation (UNO) has declared certified the sincerity of the only results issued by the President of the Independent Electoral Commission, as the results from the urns.

In the wake of these events, the WAEMU Council of Ministers met on the twenty-third of September.

(23) December two thousand and ten (2010), in extraordinary session in Bissau, Republic of Guinea Bissau, for

- to decide that the representatives duly appointed by the Government of Côte d'Ivoire shall be the only persons empowered to take measures relating to the functioning of the Union on behalf of that country;
- to instruct BCEAO to allow only representatives duly appointed by the legitimate Government of Côte d'Ivoire to carry out transactions on accounts opened in its name;
- to instruct the BCEAO and the Basques of the Union to take all necessary measures to ensure the rigorous application of the foregoing measures;
- meet whenever necessary to review developments in the situation and take appropriate measures to meet any challenges that may arise;
- report regularly to the President of the Conference of Heads of State and Government of the Union on the decisions adopted, with a view to obtaining his instructions.

**Considering** that by letter of 13 January two thousand eleven (2011), the Clerk of the Court asked Maître Claude MENTENON, lawyer of the applicants, within a maximum time limit of two (02) months, to produce by way of regularisation, the decision of the Council of Ministers whose annulment is requested, to complete the application in order to bring it into conformity with the requirements of Article 26 paragraph 2 of Regulation No 01/96/CM laying down the Rules of Procedure of the Court and finally, to justify its constitution as well as the regular registration of the lawyers at the Côte d'Ivoire Bar by producing documents in lieu of justification;

**Considering** that by letter received at the Court Registry on twenty-eight (28) January two thousand and eleven (2011), Maître Claude MENTENON produced a document entitled "*Mémoire ampliatif*" to which he attached a document designating the named Beugré YAO Claude as agent of the State of Côte d'Ivoire before the WAEMU Court of Justice, a press release from the extraordinary session of the WAEMU Council of Ministers of 23 December 2010, the letters of incorporation and the originals of the certificates issued by the President of Côte d'Ivoire and from which it follows that the Court "should be pleased to take note of the present amplifying statement and the exhibits attached thereto, for the

*proper purposes of the introductory application lodged on 11 January 2011";*

Whereas the Council of Ministers and the WAEMU Commission were served with the application and the supporting pleading filed as a regularisation by letters S n° 02/2011 and S ri° 03/2011 of eleven (11) January two thousand and eleven (2011) from the Registrar of the Court;

**Considering** that by letter of seven (07) March two thousand and eleven (2011), registered at the Court on nine (09) March two thousand and eleven (2011) under number 11.R001.3, the President of the WAEMU Commission informed the Court of the appointment of Mr Eugène KPOTA, Director of Cabinet of the President of the Commission, by interim, as agent of the said Commission in the present case,

**Considering** that by another letter, registered at the Court on nine(09) March two thousand and eleven (2011) under number 11.R001.4, the President of the WAEMU Commission informed the CSur of the appointment of Mr Harouna SAWADOGO, Lawyer registered at the Bar of Burkina Faso to assist the Agent of the Commission

**Considering** that Maître Harouna SAWADOGO informed the Court of his constitution alongside the agent appointed by the defendants by letter of ten (10) March two thousand and eleven (2011), registered on the same day under number 11.R001.6 and, following this constitution, filed a statement of defence on behalf of the defendants on thirty-one (31) March two thousand and eleven (2011),

**Considering** that the statement of defence was notified by letter no.° 07/2011 of eleven (11) April two thousand and eleven (2011) to the applicants, who did not reply,

**Considering** that by Order No 004/2012/CI of nineteen (19) April two thousand and twelve (2012), the President of the Court declared the written procedure closed;

Considering that by another order n°005/2012/CJ, Judge Daniel Lopes F-ERREIRA was appointed Rapporteur,

## **II. SUBMISSIONS OF THE PARTIES**

**Whereas** the applicants claim that the Court of Justice of the WAEMU should

- + To rule that the decision of the WAEMU Council of Ministers of twenty-three (23) December two thousand and ten (2010) is illegal under domestic positive law. in that it violates article 94 of law 2000-3113 of the first (1<sup>st</sup>) August two thousand (2000) establishing the Constitution of the Republic of Côte d'Ivoire, as well as international instruments, in particular the provisions of articles 23, 25 paragraph 1<sup>st</sup> of the WAEMU treaty; articles 12, 15 to 22 of the WAEMU Treaty, articles 3 and 4 G of the Constitutive Act of the African Union (AU) of eleven (11) July two thousand (2000), article 2 of the African Charter on Democracy, Elections and Good Governance of thirty (30) July two thousand and seven (2007), article 1<sup>er</sup> C of the Protocol of the African Charter on Democracy, Elections and Good Governance of



thirty (30) July two thousand and seven (2007).

A/SPI/12/01 on Democracy and Good Governance, Article 2 of the Charter of the United Nations, and  
United Nations Organisation (UNO)

- annul this decision
- order the WAEMU authorities to respect the freedom, independence and sovereignty of the Republic of Côte d'Ivoire and to comply with the general principles and formal provisions of the legal instruments governing the Union;

Whereas the Commission and the Council of Ministers of the WAEMU claim that the Court should :

- in the main proceedings, declare that the Court has no jurisdiction as to the nature and subject-matter of the proceedings;
- In the alternative, to declare inadmissible the application lodged by the State of Côte d'Ivoire and Mr Laurent GBAGBO for lack of standing of Mr Laui'ent GBAGBO;
- In the alternative, order the applicants to pay the costs;

### III. arguments of the parties

#### A. Jurisdiction of the Court

##### 1. Pleas in law and arguments of the applicants

Considering that the applicants allege that the present referral falls within the scope of Articles 1, 8 and 10 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, which give full jurisdiction to the said Court insofar as :

- *"the Court of Justice shall ensure that the law is complied with as regards the interpretation and application of the Fi eie of the Union";*
- *"In the event of an action brought by a State, by the Council or by the Commission, the Court of Justice shall assess the legality of regulations, directives and decisions. An action for assessment of legality shall also be open to any natural or legal person against any act of a body of the Union adversely affecting that person";*

That they indicate that it is not disputable that the decision of the Council of Ministers of UEMOA is prejudicial both to the State of Côte d'Ivoire and to Mr Laurent GBAGBO himself, in that it substitutes a candidate for the one who was declared elected by the Constitutional Council, in accordance with the Ivorian Constitution ; and that, as it stands, the maintenance of this decision will constitute a Uacheux legal precedent which will have immediate and lasting destabilising effects, both on respect for the legal institutions of the Ivory Coast and on the functioning of the organs of the Union;

## 2. Pleas in law and arguments of the defendants

Considering that the defendants raise the Court's lack of jurisdiction with two pleas to its support :

Firstly, they allege that by agreeing to examine the applicant's application, the Court of Justice will necessarily have to rule on Mr Laurent GBAGBO's standing to bring proceedings and, consequently, on his legitimacy as derived from the electoral process at issue in Côte d'Ivoire, whereas the WAEMU Treaty does not recognise the Court's jurisdiction in this matter;

Secondly, they state that the annulment sought by the applicants concerns the decision taken by the WAEMU Council of Ministers, acting as the governing body of the West African Monetary Union (WAEMU), at its extraordinary session held in Bissau on 23 December 2010, relating to the implication of the political situation prevailing in Côte d'Ivoire on the functioning of the Central Bank, the issuing institution common to the eight (08) Member States, whereas this decision is not a secondary Community act within the meaning of the WAEMU Treaty, namely a regulation, a directive or a decision, but rather falls under the WAEMU Treaty, which governs the issuing institution;

**They** state that Article 52 of the WAEMU Treaty provides that the monetary policy of the Union shall be governed by the provisions of the WAMU Treaty and subsequent texts, on the one hand ; and that, by virtue of the combined provisions of Article 21 of the WAEMU Treaty and Article 6 of the WAMU Treaty, the Monetary Union is managed by the Council of Ministers of the WAMU and conclude that the settlement of disputes arising from acts enacted by the organs of the WAMU obeys a non-judicial mode and a specific procedure and, consequently, the contested decision must not be referred to the Court for censure;

### **B. Admissibility**

#### **1. Pleas in law and arguments of the applicants**

**Considering** that in support of the admissibility of their appeal, the applicants invoke and cite the provisions of Article 15.2 of the Court's Rules of Procedure and consider that it is common ground that the Council of Ministers took a decision which does not fall within its jurisdiction and which is prejudicial to the State of Côte d'Ivoire and to Mr Laurent GBAGBO, on the one hand; and that in addition the present appeal was lodged within the period of two (02) months prescribed by Article 15.2 of the Court's Rules of Procedure. 15.2 of the Rules of Procedure of the Court, on the other hand ;

#### **2. Pleas in law and arguments of the defendants**

Considering that the defendants allege that Mr Laurent GBAGBO was unable to produce documents justifying his authority to represent the State of Côte d'Ivoire before the judicial authorities, the Court will be pleased to declare the present application inadmissible

in that the applicant does not have standing to bring proceedings in the name and on behalf of the State of Côte d'Ivoire;

They further allege infringement of the statutory provisions of the UEMOA Court of Justice, in particular Article 31 of Additional Act No. 10/96 on the Statutes of the Court of Justice and Article 22 of Regulation No. 01/96 on the Rules of Procedure, in that the State of Côte d'Ivoire, as applicant, has in no way appointed an agent to represent it in the proceedings. This designation, which results from the application of the aforementioned articles, must be express and derive from the mention of the capacity of Agent of the person designated on the application, and the presence of a Lawyer cannot make up for the requirement of this formality, which appears to be substantial,

### C. At the back

#### 1. Pleas in law and arguments of the applicants

**Considering** that the applicants invoke the illegality of the decision of the WAEMU Council of Ministers of twenty-three (23) December two thousand and ten (2010) from the angle of formal irregularity and from the angle of illegality resulting from the lack of competence of the Council of Ministers;

**Considering** that from the point of view of formal illegality, they allege that under the terms of article 23 of the WAEMU Treaty as amended by article 40-3" of the WAEMU Treaty of twenty

(20) janvier deux mil sept (2007), jour les questions politiques et de souveraineté, les Ministres des Affaires étrangères siège{on. at the WAEMU Council of Ministers, whereas on reading the press release circulating the decision submitted to the Court for censure, it is established that the said decision was taken exclusively by the Ministers of Economy and Finance, in the absence of the Ministers of Foreign Affairs, who were not consulted, and in the absence of the Governor of the BCEAO, the President of the Banking Commission, the President of the CREPMF and the President of the WAEMU Commission, who are ex officio members of the WAEMU Council of Ministers by virtue of Article 12 of the WAEMU Treaty;

In addition, they point to the failure to comply with Article 25 paragraph 1<sup>e</sup> ' of the amended WAEMU Treaty, which provides: "*the deliberations of the Council of Ministers shall be prepared by the Committee of Experts, composed of representatives of the Member States...*" and the absence of a hearing of the State of Côte d'Ivoire or of a representative of Mr Laurent GBAGBO, as required by respect for the elementary principle of adversarial proceedings, which is a principle of law;

Considering that with regard to the illegality resulting from the incompetence of the Council of Ministers, the applicants state that 'the provisions conferring powers on the Council of Ministers resulting from Articles 19 to 22 of the WAMU Treaty list these powers exhaustively and do not allow the Council to interfere in the internal affairs of Member States;



They also consider that the Council of Ministers has taken a political decision in defiance of the sovereignty of a State by claiming to take note of the decisions of the UN, the African Union and ECOWAS to recognise Mr Alassane Dramane OUATTARA as the legitimately elected President of Côte d'Ivoire,

That the Council thus felt obliged to decide that the representatives duly appointed by the legitimate Government of Côte d'Ivoire are the only ones entitled to take measures relating to the functioning of the Union, on behalf of that country; thus implying that the candidate declared the winner by the decision of the Constitutional Council would not be entitled to appoint the representatives of the State of Côte d'Ivoire entitled to take measures relating to the functioning of the Union, or at least to maintain them in office;

That, in so doing, the Council of Ministers has, according to the applicants, also infringed the instruments internationaux opposables aux Etats membres de l'UEMOA, les dispositions de de l'Acte Constitutif de l'Union Africaine du onze (11) juillet deux mil (2000), les dispositions de l'article <sup>fer</sup> c d Protocole A/SPI/12/01 sur la démocratie et la bonne governance, signed by all WAEMU Member States, and the United Nations Charter;

## 2. Pleas in law and arguments of the defendants

**Considering** that, in the defendants' view, the applicants' pleas in law are inoperative in that there is no violation of the provisions of the WAEMU and WAMU Treaties, nor is the contested decision illegal in that it is a political and sovereign decision taken in violation of international instruments and the Ivorian Constitution,

Considering that on the first point, they allege that the decision of the WAEMU Council of Ministers relates mainly to the economic and financial policy of the Union because, on the question relating to the recognition of Mr Alassane Dramane OUATTARA as the legitimately elected President of Côte d'Ivoire, the Council merely took note of the decisions of the UN, the African Union and ECOWAS to recognise Mr Alassane Dramane OUATTARA as the legitimately elected President of Côte d'Ivoire;

Consequently, the non-participation of the Ministers of Foreign Affairs at this session cannot constitute a cause for annulment of the decision of twenty-three (23) December two thousand and ten (2010), any more than the absence of mention relating to the preparation of the deliberations of the Council by the Committee of Experts;

**Considering** that, as regards the second point, the defendants consider that the applicants are wrong to claim that the contested decision is manifestly illegal in that it was taken outside the remit of the Council of Ministers and in breach of the fundamental rules relating to State sovereignty as laid down by international instruments and the Ivorian Constitution, thus insinuating that the contested decision is aimed at an unconstitutional change of power in Côte d'Ivoire, even though the allegation that the Council of Ministers has no decision-making powers in matters of politics and sovereignty is totally inaccurate in the light of the second paragraph of Article 23. of the Treaty of

UEMOA, as amended by article 40-3 "" of the UMOA Treaty which states: *"for matters of policy and security, the Ministers of Foreign Affairs shall sit on the Council of Ministers of UEMOA"*,

They state, however, that with regard to the political and sovereignty issue, certainly linked to the recognition of Mr Alassane Dramane OUATTARA as the legally elected President, the contested decision states: *"the Council of Ministers has taken note of the decisions of the UN, the African Union and ECOWAS0 to recognise Mr Alassane Dramane GUA TTARA as the legitimately elected President of Côte d'Ivoire"*,

Thus, in the defendants' view, the applicants have the wrong opponents with regard to the decisions that assessed and settled the political and sovereignty issue relating to the presidential elections held in Côte d'Ivoire and that as long as these decisions produce their full effects, it will be futile for them to seek to challenge the decision of the WAEMU Council of Ministers of twenty-three (23) December two thousand and ten (2010) which mainly deliberated on issues relating to the economic and monetary situation of the Union;

#### **IV. SJOTIFS DE L'ARIÉET**

##### **A. Jurisdiction of the Court**

Whereas Article 8 of the Additional Protocol No. 1 on the **supervisory** bodies of WAEMU allows any Member State, the Council of Ministers and the Commission of WAEMU to bring an action for annulment against the regulations, directives and decisions of the organs of the Union and any natural or legal person against any act of an organ of the Union which adversely affects him or her;

Whereas the present action for annulment of the decision of the WAEMU Council of Ministers taken on 23 December 2010 is brought by the State of Côte d'Ivoire and by Mr Laurent GBAGBO in his capacity as President of the Republic of Côte d'Ivoire:

**Whereas**, in accordance with the provisions of the above-mentioned Article 8 of the Additional Protocol No. 1 on the Control Organs of WAEMU, the presence of a Member State, in this case the State of Côte d'Ivoire, gives rise to the jurisdiction of the Court of Justice of WAEMU without the need to substantiate any grievance;

It must therefore be held that the present action falls within the jurisdiction of the Court of Justice of the WAEMU;



## B. Admissibility of the action

### 1. On the failure of the State of Côte d'Ivoire to appoint an agent

**Considering** that, following the letter by which the Registrar of the Court requested, on thirteenth (13) January two thousand and eleven (2011), to Maître Claude MENTENON, Counsel for the applicants, within a maximum period of two months, to complete the application in order to bring it into conformity with the requirements of Article 26 paragraph 2 of Regulation No. 01/96/CM on the Rules of Procedure of the Court, Maître Claude MENTENON produced, by letter dated twenty-five (25) January two thousand and eleven (2011), received at the Registry on twenty-eight (28) January two thousand and eleven (2011), a document entitled "*Mémoire ampliatif*" to which he attached a document designating the person named Beugré Claude YAO as the agent of the State of Côte d'Ivoire before the WAEMU Court of Justice;

That it is thus necessary to reject the defendants' argument based on the violation of the statutory provisions of the WAEMU Court of Justice, in particular, those of Article 31 of Additional Act No. 10/96 on the Statutes of the Court of Justice and Article 22 of Regulation No. 01/96 on the Rules of Procedure of the Court;

### 2. Failure to produce the document against which the action for annulment is brought

**Considering** that, pursuant to Articles 31 and 32 of Additional Act No. 10/96 on the Statutes of the WAEMU Court of Justice, the applicants were invited to regularise their application within a period of two (02) months, in particular by producing the act which is the subject of the action for annulment;

Considering that in the statement of case filed in response to this invitation or "*amplified statement of case*"

"The applicants state that they will produce, where necessary, a copy of the decision in question in the form of a press release, as they were aware of it and which they had already annexed to the application for annulment filed on eleven (11) January two thousand and eleven (2011) under number 7;

**Considering** that the said press release cannot formally constitute an act of the WAEMU Council of Ministers insofar as the copy placed on file does not include any official certification; that in its supposed content the document criticised, in taking note of the decisions taken by the WMO, the African Union and ECOWAS, merely makes a statement that is far from being prejudicial to Mr Laurent GBAGBO ;

Whereas it has been accepted in the case-law developed in **the context of** actions for annulment brought by Member States or Institutions (ECJ . Parliament v Council, C - 316/91, Rec. 1-625, paragraph 8) that all provisions adopted by the institutions, irrespective of their faith, are to be regarded as challengeable acts, it is on condition that those acts exist, are produced and, as required by the abovementioned case-law, are intended



to produce binding legal effects,

That the defendants' argument based on your failure to produce the following documents should be upheld

the act which is the subject of the action for annulment :

**3. Standing of Mr Laurent GBAGBO es-nom et es-  
as representative of the State of Côte d'Ivoire**

Considering that the applicants have merely produced an unofficial copy of the Decision of the Constitutional Council No. CI-20 10-EP-34/03-12/CC/SG of Tuesday twenty-eight June 2003

(28) novembre deux mil dix (2010) portant proclamation des résultats définitifs de l'élection because it was printed from a website and did not include any signature;

Considering that Mr Laurent GBAGBO's standing to act in the name and capacity of representative of the State of Côte d'Ivoire is based on his status as President of the Republic, which, according to the applicants, derives from the aforementioned decision,

Considering that this document, which has no evidential value, is not of such a nature as to corroborate Mr Laurent GBAGBO's claims as to his standing to sue, that it is appropriate to draw all the consequences therefrom;

**Considering** finally that the analysis of the other pleas raised by the applicants therefore becomes superfluous;

**V. EXPENSES**

Whereas it is clear from the provisions of Article 60 of the Rules of Procedure of the Court that any unsuccessful party shall be ordered to pay the costs;

Since the applicants have been unsuccessful, they should be ordered to pay all the costs in accordance with the above provisions.

1!

**THEREFORE**

**The Court, adjudicating publicly, adversarial, in matters of law community :**

- **declares itself competent ;**
- **declares the action brought by t h e State of Côte d'Ivoire and Mr Laurent GBAGBO inadmissible as it stands;**
- **order the applicants to pay all the costs.**

**Thus made, judged and pronounced in public hearing in Ouagadougou on the**

**d:----- Signed by the Chairman and the Registrar.**

