

000417

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

IN THE MATTER OF

012/2020
22/4/2020
(000417-000406) JB

GUILLAUME KIGBAFORI SORO AND OTHERS

v.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 012/2020

ORDER FOR PROVISIONAL MEASURES

April 22, 2020



The Court composed of: Ben KIOKO, Vice-President, Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM and Imani D. ABOUD, Judges and Robert ENO, Registrar.

Pursuant to Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter "the Protocol") and Rule 8 (2) of the Rules of Court (hereinafter "the Rules"), Judge Sylvain ORE, an Ivorian national, recused himself.

In the Matter of:

GUILLAUME KIGBAFORI SORO AND OTHERS

Represented by:

- i. Mr. Affoussy BAMBA, Advocate of the Paris Bar;
- ii. Mr. Brahima SORO, Advocate of the Abidjan Bar;

versus

THE REPUBLIC OF CÔTE D'IVOIRE

Represented by:

- i. Mr. Constant Zirignon DELBE, Technical Advisor to the Minister of Justice and Human Rights, keeper of the seals;
- ii. Barrister Abdoulaye Meite, Advocate of the Côte d'Ivoire Bar;
- iii. Barrister Samassi Mamadou, Advocate of the Côte d'Ivoire Bar;
- iv. Barrister Patrice Gueu, Advocate of the Côte d'Ivoire Bar;
- v. Barrister Mamadou Kone, Advocate of the Côte d'Ivoire Bar.

After deliberating,

Renders the following Order:

I. THE PARTIES

1. Guillaume Kigbafori SORO, Alain LOGOGNON, Camara LOUKIMANE, Kanigui SORO, Yao SOUMAILA, Soumahoro KANDO, Kamaraté Souleymane KONE, Karidioula Souleymane, Tehfour KONE, Simon SORO, Porlo Rigobert SORO, Félicien SEKONGO, Marc Kidou OUATTARA, Mamadou DJIBO, Aboubacar TOURE, Babou TRAORE, Ladjji OUATTARA, Gnamiand N'DRIN, Dahafolo KONE, Adama ZEBRET (hereinafter referred to as "the Applicants") are nationals, politicians and Parliamentarians from Côte d'Ivoire, some of whom have held senior positions in government amongst which, Prime Minister and Head of Government, Speaker of the National Assembly, ministers or Heads of Political Parties. An arrest and detention warrants were issued against them in a criminal matter relating to embezzlement of public funds and theft of public property and of plotting against the authority of the State. They were indicted on 20 December 2019.
2. The application was filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State") which became a party to the African Charter on Human and Peoples Rights (hereinafter referred to as "the Charter"), on 31 March 1992 and to the Protocol on 25 January 2004. The Respondent State also deposited the Declaration under Article 34 (6) of the Protocol, on 23 July 2013, thereby accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the application that on 20 December 2019, the State Prosecutor in the Court of First Instance of Abidjan Plateau was seized of a complaint filed by the Treasury Solicitor against Cissé Mory and René N. N'guessan, Kamaraté Souleymane Koné and Guillaume Kigbafori Soro concerning embezzlement of public funds committed in 2007, when Guillaume Kigbafori Soro held the post

of Prime Minister. The other Applicants are accused of complicity and participating in a plan to overthrow the government and destabilise the country.

4. Three days later, that is, on 23 December 2019, the State Prosecutor gave a press conference and announced that the Directorate for territorial surveillance informed him that Guillaume Kigbafori Soro, who had travelled abroad for several months “planned to overthrow the government and take control of the country”.
5. An arrest warrant was issued against Guillaume Kigbafori Soro while between 23 and 24 December 2019, the other Applicants were arrested, prosecuted for embezzlement of public funds, money laundering, funding terrorism, complicity and acts of serious suspicion of an attempt to attack the authority and integrity of the country and placed under custody in different detention centres in Abidjan and other cities in the Country.
6. On 8 January 2020, the State Prosecutor seized the Cassation Court requesting the latter to appoint a Judge to conduct all necessary investigations relating to the case. By a Ruling of 17 January 2020, the Cassation Court granted the request by appointing a judge to conduct the investigation. It was within this context that the Applicants seized this Court of an application for violation of their human rights as well as a request for provisional measures.

B. Alleged Violations

7. In their application on the merits, the Applicants allege that their rights guaranteed under Articles 7, 12 and 18 of the Charter and Articles 14 and 23 of the International Covenant on Civil and Political Rights (ICCPR), have been violated. They specified the violation of the following rights:
 - i. The right to fair trial;
 - ii. The right to be tried by a competent tribunal;
 - iii. The right to presumption of innocence;
 - iv. The right to defence;

- v. The right to be informed about charges brought against them and the right to free access to the case file;
- vi. The right to freedom and security;
- vii. The freedom of movement of Mr. Guillaume Kigbafori Soro;
- viii. The right of equality of all before the law and equal protection of the law; and
- ix. The right to the moral health of the family.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. On 2 March 2020, the main application and the request for provisional measures, were both filed at the Registry of the Court.
9. On 12 March 2020, the Registry acknowledged receipt of both the application and the request for provisional measures and notified the Respondent State on the same day. By the same notification, the Registry requested the Respondent State to file its submission on the request for provisional measures.
10. On 25 March 2020, the Respondent State filed its submission on the request for provisional measures.
11. On 9 April 2020, one of the Applicants, Alain Lobognon seized the Court with a request for provisional measures aimed at securing his immediate release on bail. He argued that since his detention, his health situation had deteriorated considerably and that the prison officials deliberately kept his family away and prevented them from seeing him.
12. On 12 April 2020, the Registry acknowledged receipt of the said request and served it on the Respondent State.

Prayers of the APPLICANTS

13. The Applicants pray the Court to:

“i. Stay the execution of the arrest warrant against Guillaume Kigbafori Soro;

- ii. Suspend the execution of the arrest and detention warrants against other Applicants and to release them or allow them to fully enjoy their political and civil rights pending the judgment of the Court on the merits.
- iii. Report to the Court within 15 days as from the day of reception of the order for provisional measures on the implementation of the order”

IV. THE JURISDICTION OF THE COURT

14. The Applicants invoke Articles 3 and 5(3) of the Protocol to contend that, since their application infers the violation of provisions of the Charter and since it is against the Respondent State which has made the Declaration under Article 34(6) of the Protocol, the Court should, without ascertaining whether it has jurisdiction on the merits of the case issue the provisional measures sought based on its *prima facie* jurisdiction.

15. The Respondent State did not submit on this issue.

16. Pursuant to Article 3(1) of the Protocol “the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the State concerned”.

17. When seized with an application, the Court is required to conduct a preliminary examination of its jurisdiction pursuant to Articles 3 and 5(3) of the Protocol. However, with regard to provisional measures, the Court need not ascertain whether or not it has jurisdiction on the merits of the case, but simply has to ensure that it has *prima facie*¹ jurisdiction.

¹ *Amini Juma v. United Republic of Tanzania* (provisional measures) (2016) 1 RJCA 687, § 8 ; *African Commission on Human and Peoples' Rights v. Libya* (provisional measures) (2013) 1 RJCA 149, § 10

18. In the instant case, the rights alleged by the Applicants to have been violated, are rights protected under the African Charter and the International Covenant on Civil and Political Rights (ICCPR), two human rights instruments to which the Respondent State is a party.²
19. Based on the foregoing, the Court finds that it has *prima facie* jurisdiction to hear the application.

V. ADMISSIBILITY

20. The Respondent State contends that one of the Applicants, Guillaume Kigbafori Soro has not exhausted available local remedies, notably the remedy against the order of the investigating Judge who exercised his mandate to investigate the matter. It further contends that as regards the other Applicants, they too failed to exhaust the remedy to challenge their remand in custody as provided under Article 220 of the Ivorian Criminal Procedure Code.
21. The Applicants refute this averment by the Respondent State and submit records of declaration of appeal filed by the 15 Applicants against the Order remanding them in custody, for an assessment by the Court.

22. The Court underscores that in regard to provisional measures, neither the Charter nor the Protocol provide conditions for admissibility. Consideration of requests for provisional measures is only subject to one condition, that of determining the *prima facie* jurisdiction of the Court, which has been established in the instant case.
23. Consequently, the Court dismisses the objection raised by the respondent State and will therefore consider the provisional measures sought.

² The Respondent State withdrew from the ICCPR ON 26 March 1993

VI. PROVISIONAL MEASURES SOUGHT

000410

24. The Applicants contend that issuing an arrest warrant against Guillaume Kigbafori Soro exposed him to arrest and extradition to his country where he could be detained, and this would prevent him not only from campaigning for the next presidential election of October 2020 for which he intends to stand as a candidate but he also runs the risk of being disqualified for the election. They are of the view that an arrest and detention of Guillaume Kigbafori Soro in such a context will seriously impact on his political rights.

25. As regards the other Applicants, they allege that their illegal and arbitrary detention, regardless of their immunity forced them to stop their political activities and further prevented them from enjoying their freedom of expression. They aver that this is a situation of extreme gravity and urgency and the risk of irreparable harm to them, in particular their right to life and physical integrity as enshrined in the Charter.

26. The Applicants contend that the urgency and gravity of the situation required provisional measures to safeguard their political and parliamentary rights and their freedom which had been trampled upon.

*

27. The Respondent State contends that the conditions set out for the Court to issue provisional measures, notably, extreme gravity, urgency and the prevention of irreparable harm to persons have not been met and that the application does not have any probative value to warrant such measures. It affirms that the Applicants failed to adduce any material evidence in support of their fears based on eventualities and nothing else but speculation and suspicion.

28. The Respondent State contends that the detention orders against the Applicants, with the exception of Guillaume Kigbafori Soro, have already been

implemented and those concerned are not in a position to call for the suspension.

29. According to the Respondent State the provisional measures sought go far beyond the scope of provisional measures and could impede the normal functioning of the justice system. In that regard, it prays the Court to dismiss the request for provisional measures filed by the Applicants.

30. The Court notes that Article 27 (2) of the Protocol provides as follows:

“In case of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.

31. Rule 51(1) of the Rules of Court, however, provides that:

“Pursuant to article 27(2) of the Protocol, the Court may, at the request of a party, the Commission or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice.”.

32. The Court notes that it behoves on it to decide in each case, whether in light of the specific circumstances of the case, it has to exercise the jurisdiction conferred on it under the above-mentioned provisions.

33. The Court takes into account the applicable criteria when dealing with provisional measures, which are of a specific nature and can only be ordered in cases of extreme gravity, urgency and to prevent irreparable harm when all these conditions are met³. In that regard, the Court notes that extreme gravity presupposes that there is a real “risk and it is imminent that irreparable harm could take place before the Court renders its final judgement” in the matter and there is urgency each time “acts which may cause irreparable harm could take

³ Application No.001/2015 : Armand Guéhi v. United Republic of Tanzania, Ruling of 18 March 2016, § 20

place at any time before the Court renders its final decision in the matters” in question⁴.

34. In the instant case, the Court notes that the Applicants constitute twenty “personalities”, a former Prime Minister and Head of Government, a former Speaker of the House of Assembly, former Ministers, current parliamentarians, a Police Commissioner, a Doctor and leaders of political parties, accused of embezzling public funds, of attempting to embezzle public funds, money laundering, funding terrorism, complicity and presumption of serious attempts to overthrow the authority and integrity of the State. The Applicants are facing prison terms ranging from 20-years to life imprisonment as provided under Articles 162 and 163 of the Ivorian penal code.

35. The Court further notes that in the instant case, the execution of the arrest or detention warrant against political personalities amongst whom is one who has already declared his intention to stand for elections and the fact that the elections are just a few months away, could seriously compromise the freedom and political rights of the Applicants. To that end, the Court notes that this is a situation of extreme urgency since the said elections are scheduled to take place less than six months from the date of this application.

36. The Court also notes that it is a principle that arrest or detention warrants are taken for serious acts as a protective measure or when the accused do not offer enough guarantees to appear before national courts. In the present case, the Court considers that, with the applicants' social and professional situation, they have well-known addresses.

37. The Court also recalls that in criminal matters, considering that the accused enjoys the benefit of doubt and the presumption of innocence, the suspension of the detention order against the Applicants during investigation is a measure

⁴ Application No.062/2019: Sébastien Germain Marie Aïkoue Ajavon vs. Republic of Benin, Ruling of 17 Avril 2020, § 61

which will not only preserve the rights of everyone but would also prevent serious and irreparable consequences.⁵

38. The Court notes that the situation in which the Applicants find themselves exposes them to a serious risk of being deprived of the enjoyment of their rights and this is a situation where the unexpected circumstances may lead to irreparable harm. The Court also finds that, in the present state of proceedings against the Applicants, it is necessary to stay the execution of the arrest and detention warrants and to maintain the *status quo ante* until it renders its judgment on the merits.

39. Accordingly, the Court finds that the circumstances in this case require it to order provisional measures pursuant to Article 27(2) of the Protocol and Rule 51 of the Rules of Court, to preserve the *status quo ante* pending the judgement on the merits of the case.

40. Regarding the request filed on 9 April 2020 by the Applicant, Alain Logbonon, the Court is of the view that it is not necessary to consider his request for provisional measures in a separate order since the allegations of the rights of the Applicant to adequate healthcare and to be visited by members of his family are adequately addressed by the present order of the Court.

41. To avoid any ambiguity, this Order is on provisional measures and does not in any way prejudge the findings of the Court on jurisdiction, admissibility and the merits of the main application.

VII. OPERATIVE PART

42. For these reasons,

THE COURT,

⁵ IACHR, APPLICATION No. 10 208; *Salvador Jorge Blanco v. Dominican Republic*. IACHR annals. 1988-1989, doc. OAS/Ser. L/V 11.68. DOC.8 REV. 1, P. 55-59

Unanimously,

Orders the Respondent State to:

- i. *stay* the execution of the arrest warrant against Guillaume Kigbafori Soro;
- ii. *stay the* execution of the detention warrants against the Applicants Guillaume Kigbafori SORO, Alain LOGOGNON, Camara LOUKIMANE, Kanigui SORO, Yao SOUMAILA, Soumahoro KANDO, Kamaraté Souleymane KONE, Karidioula Souleymane, Tehfour KONE, Simon SORO, Porlo Rigobert SORO, Félicien SEKONGO, Marc Kidou OUATTARA, Mamadou DJIBO, Aboubacar TOURE, Babou TRAORE, Ladjil OUATTARA, Gnamiand N'DRIN, Dahafolo KONE, Adama ZEBRET and to release them on bail;
- iii. *report* to the Court on the implementation of the provisional measures ordered in this judgement within thirty (30) days, as from the date of notification of this Order.

Signed:

Ben KIOKO, Vice-President;

and Robert ENO, Registrar.



Done in Arusha, this Twenty second day in the month of April in the year Two Thousand and Twenty, in English and French, the French text being authoritative.