

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		

APPLICATION FOR INTERVENTION BY RECKYA MADOUGOU

IN THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUEYOU

(APPLICANT)

v.

**REPUBLIC OF BENIN
BURKINA FASO
REPUBLIC OF CÔTE D'IVOIRE
REPUBLIC OF THE GAMBIA
REPUBLIC OF GHANA
REPUBLIC OF MALAWI
REPUBLIC OF MALI
REPUBLIC OF TUNISIA**

RESPONDENT STATES

APPLICATION NO. 010/2021

**ORDER
(Intervention)**

30 MARCH 2023



The Court, composed of: Imani D. ABOUD, President; Blaise TCHIKAYA, Vice-President; Ben KIOKO, Suzanne MENGUE, Chafika BENSAOULA, Stella I. ANUKAM and Dumisa B. NTSEBEZA – 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 referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Judges Razaâ BEN ACHOUR, a national of the Republic of Tunisia, Tujilane R. CHIZUMILA, a national of the Republic of Malawi, Modibo SACKO, a national of the Republic of Mali, and Dennis D. ADJEI, a national of the Republic of Ghana, did not hear the Application.

In the Matter of:

Houngue Éric NOUDEHOUEYOU

Self-represented;

Versus

1. REPUBLIC OF BENIN

Unrepresented;

2. BURKINA FASO

Represented by:

- i. Mrs. Stéphanie Rosemonde BENON ZOUNGRANA, Deputy Judicial Officer of the State;
- ii. Mrs. Valérie ZERBO SAWADOGO, Deputy Judicial Officer of the State;
- iii. Mr. N. Landry YAMEOGO, Deputy Judicial Officer of the State;
- iv. Mr. Soumaïla NYAMBA, Deputy Judicial Officer of the State;
- v. Mr. Mahamadi Etienne DIALLO, Deputy Judicial Officer of the State;
- vi. Mr Edgar BAMOUNI, Deputy Judicial Officer of the State;

3. REPUBLIC OF CÔTE D'IVOIRE

Unrepresented;

4. REPUBLIC OF THE GAMBIA

Unrepresented;

5. REPUBLIC OF GHANA

Represented by:

- i. Mr. Godfred Yeboah DAME, Attorney General and Minister of Justice, Office of the Attorney General, Ministry of Justice;
- ii. Ms. Diana Asonaba DAPAAH, Deputy Attorney General and Deputy Minister of Justice, Office of the Attorney General, Ministry of Justice;
- iii. Ms. Helen Akpene Awo ZIWU, Solicitor General, Office of the Attorney General, Ministry of Justice;
- iv. Ms. Yvonne Atakora OBUOBISA, Director of Public Prosecution, Office of the Attorney General, Ministry of Justice;
- v. Dr. Sylvia ADUSU, Chief State Attorney, Office of the Attorney General, Ministry of Justice;
- vi. Ms. Ama Asare KORANG, Assistant State Attorney, Office of the Attorney General, Ministry of Justice;
- vii. Ms. Lisa OBENG, Assistant State Attorney, Office of the Attorney General, Ministry of Justice;

6. REPUBLIC OF MALAWI

Unrepresented;

7. REPUBLIC OF MALI

Unrepresented;

8. TUNISIAN REPUBLIC

Unrepresented;

Reckya MADOUGOU – Requestor

Represented by Nadine DOSSOU-SAPKONOU, Lawyer of the Benin Bar,
SCPA Robert M. DOSSOU.

after deliberation,

hereby renders the following Ruling:

I. THE PARTIES

1. Ms Reckya MADOUGOU (hereinafter referred to as “the Requestor”), a Benin national, brings this request for intervention on the ground that she has an interest in the Application filed by Mr. Houngue Éric Noudehouenou (hereinafter referred to as “the Applicant”) insofar as some of the violations alleged in the main Application relate to her.

2. The main Application is filed against:
 - i. The Republic of Benin, which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986, and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 22 August 2014. On 8 February 2016 it deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as “the Declaration”) by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and non-governmental organizations. On 25 March 2020, the Republic of Benin deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal had no bearing on pending cases or on new cases filed before the withdrawal came into force one year after the deposit, that is, on 26 March 2021¹.

¹ *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Ruling (5 May 2020), (Provisional Measures), § 4-5 and Corrigendum of 29 July 2020.

- ii. Burkina Faso, which became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. Burkina Faso also deposited the Declaration on 28 July 1998. It took effect on the date of entry into force of the Protocol, that is, on 25 January 2004.
- iii. The Republic of Côte d'Ivoire, which became Party to the Charter on 31 March 1992 and to the Protocol on 25 January 2004. It also deposited the Declaration on 23 July 2013. On 29 April 2020, the Republic of Côte d'Ivoire deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal has no bearing on pending cases and on new cases filed before the withdrawal came into effect, one year after the deposit, that is on 30 April 2021².
- iv. The Republic of the Gambia became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It also deposited the Declaration on 3 February 2020.
- v. The Republic of Ghana, which became a Party to the Charter on 1 March 1989 and to the Protocol on 16 August 2005. It further deposited the Declaration on 10 March 2011.
- vi. The Republic of Malawi, which became a Party to the Charter on 23 February. It became a Party to the Protocol and deposited the Declaration on 9 October 2008.
- vii. The Republic of Mali, which became a Party to the Charter on 21 October 1986 and to the Protocol 20 June 2000. It deposited the Declaration on 19 February 2010.

² *Suy Bi Gohore Émile and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 044/2019, Judgment of 15 July 2020 (merits and reparations), § 67;

viii. The Republic of Tunisian, which became a Party to the Charter on 21 October 1986 and to the Protocol on 5 October 2007. It also deposited the Declaration on 2 June 2017.

3. These States are referred to individually by their respective official names and collectively as “Respondent States”.
4. The Applicant submits that the Republic of Benin is responsible for continuous human rights violations, contrary to the decisions of this Court. He further alleges that the Respondent States should be held responsible for the non-enforcement of the Court’s decisions since they are members of the Executive Council of the African Union (hereinafter referred to as “Executive Council”) which has oversight responsibility for the enforcement of the Court’s decisions.

II. SUBJECT OF THE REQUEST FOR INTERVENTION

5. The Request for leave to intervene is in relation to the original Application filed on 25 March 2021 by the Applicant. The Requestor submits that the Applicant alleges violation of rights that relate to her, including those protected by Articles 5 and 6 of the Charter, Articles 2, 7 and 9 of the ICCPR and Article 11 of the Universal Declaration of Human Rights (UDHR).
6. She further submits that her interest in the present case is fully justified and that she intends to file additional pleadings and evidence, which she believes are crucial to the Court.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The main Application together with a request for provisional measures was filed by the Applicant at the Registry on 25 March 2021. The Registry acknowledged receipt thereof on 11 June 2021.

8. On 12 May 2021, the Requestor filed a request with the Registry seeking leave to intervene. The Registry acknowledged receipt on 11 June 2021.
9. On 25 May 2021, the Requestor filed an *ad litem* mandate at the Registry in which she named the Applicant as her representative.
10. On 16 August 2022, the Registry served these various applications on the Respondent States, with a request to submit the names of their representatives and to file their submissions in respect of the application for leave to intervene, within thirty (30) days of receipt, that is, on 22 August 2022 for the Republic of Burkina Faso, Benin, Côte d'Ivoire, Ghana, Malawi and the Republic of Mali, and on 23 August 2022 for the Republic of the Gambia and Tunisia.
11. The Republic of Burkina Faso and Ghana filed their list of representatives, respectively, on 27 September 2022 and 5 October 2022. Although the lists were filed out of time, the Court decided to admit them in the interest of justice.
12. At the expiration of the thirty (30) days' time-limit, none of the Respondent States had filed their Response.

IV. ADMISSIBILITY OF THE APPLICATION FOR INTERVENTION

13. On 12 May 2021, the Requestor filed with the Court a Request to Intervene. She contends that the said Application is admissible under Rule 61 of the Rules.
14. The Requestor considers, first, that the said request was filed within reasonable time, as the Registry received the main Application on 25 March 2021.

15. Secondly, with regard to her identity and legal representation, the Requestor submits that she indicated her full name and address, the identity of her lawyers and the elected domicile.
16. Furthermore, with regard to her interest in the case, the Requestor notes that the main Application alleges violations of human rights protected under Article 11 of the Universal Declaration of Human Rights (UDHR), Articles 2, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 5 and 6 of the Charter.
17. She concludes that she has *locus standi* insofar as the case relates to violations of rights of which she is the direct victim and, in that capacity, she is well placed to raise them.
18. The Requestor further avers that she has standing because an actual she is in possession of evidence which the Applicant in the main Application does not have. According to her, “these particulars are indispensable to the interests of justice and have a decisive influence on the trial”.
19. She further submits that the particulars relating to the inhuman conditions of her detention and the allegations of violations of her rights, as recounted in the main Application, can only be comprehensively understood if she is afforded a hearing, which is only possible if the Court grants her leave to intervene.
20. Finally, with regard to the purpose of the intervention, the Requestor avers that she wishes to submit her observations and additional evidence on the alleged violations of her own rights. In her view, it is essential that the Court has all the evidence in her possession.
21. None of the Respondent States filed a response to the Request for Intervention

22. The Court notes that Rule 61(2) (3) and (6) of the Rules provides:

The Court may, in the interests of justice, permit any person having an interest in a case to intervene.

An Application to intervene shall indicate:

- a) the names and addresses of the Applicant or his/her representatives, if any;
- b) the Applicant's interest in the case;
- c) The purpose of the intervention; and
- d) a list of all supporting documents.

"[...] Where the Court rules that the Application is admissible, it shall fix a time limit within which the intervening party shall submit its written observations."

23. It emerges from these provisions that an application to intervene, which is an incidental procedure, aims to protect a legal interest likely to be affected by the decision that the Court may issue in the main application. In this respect, the Court notes that by the words "any other person who has interest in a case", the Rules refer to any third party to the main proceedings.

24. In the Court's view, the terms "third party to the main proceedings" include not only any person who is not a principal party *stricto sensu*, but also any person whose interest cannot be taken into consideration in the case. It follows that a person who has duly issued a mandate *ad litem* to the Applicant cannot claim to be a third party to the main proceedings.

25. The Court notes that in the present case, there is common ground that certain facts stated in the initial Application concern the Requestor, as is the case with her arrest following the protests of 5 March 2021 and the alleged violation of her rights. In addition, some of the violations alleged by the Applicant relate exclusively to the situation of the Requestor³. The same is

³ The violations are as follows: The right to liberty and security, protected by Article 9(1) of the ICCPR, due to the "arbitrary" arrest of the Petitioner; The right to respect for the principle of legality of criminal law, protected by Article 15 of the International Covenant on Civil and Political Rights (ICCPR), due to the arrest of the Petitioner for actions not provided for in criminal law; the right to privacy, protected by

true of some of the reparation measures requested by the Applicant⁴. The Court observes that, in this regard, Mr Houngue simultaneously instituted proceedings and filed a request for provisional measures “for the urgent situation of preserving the life of the Requestor due to irreparable damage and unforeseeable consequences [...]”.

26. The Court also notes that on 25 May 2021 the Registry received a document containing the instruction: *“I, the undersigned Reckya MADOUGOU, give “mandate ad litem” to Mr Houngue Eric Noudehouenou [...] before the African Court on Human and Peoples' Rights (ACtHPR), in the case (...) concerning the violations of my fundamental rights committed under the responsibility of the Republic of Benin and of which it stands accused in the said case, including those noted in the Applicant's additional pleadings and submissions resulting from the facts of the matter and/or in reply to the observations of the respondent(s). In the interest of the work of Justice, the present mandate does not preclude any other violations of my fundamental rights that the ACtHPR, in the said case, will identify, judge and sanction ex officio, if necessary, nor the reparation measures that the ACtHPR will pronounce ex officio, if necessary, in my favour, in the present case”*.
27. The Court notes that this document is an *ad litem* mandate in the context of the present case, by virtue of which the Applicant in the initial Application, Mr Houngue Eric, is defending the interests of the Requestor in the case between him and the Respondent States.
28. The Court notes that the rights alleged by the Requestor in her request for intervention are the same as those alleged by the Applicant in the main

Article 17 of the ICCPR, due to the public and unreasonable accusations made against the Petitioner, without any credible evidence, while the internal judicial proceedings against her were still ongoing; the right to the presumption of innocence, guaranteed by Article 11 of the UDHR, due to the statements made by a Beninese minister seeking to make people believe that the Petitioner was guilty.

⁴ Point 46.5 of the operative part of the initial Application reads: “Order the Respondent State to, without delay, release Dame Reckya Madougou from custody and to apologise publicly for the humiliations she suffered and the Court shall award financial compensation in such amount as it may in its wisdom determine”; Point 46.14 of the operative part of the initial Application reads “Order the Respondent State to apologise publicly to [...] Ms Reckya Madougou.

Application. The Court further notes that the entitlement of a Requestor is only possible for persons whose interests are not represented in the main case. Furthermore, the Requestor cannot intervene and have her interests simultaneously defended in the main Application.

29. Accordingly, the Court deems it unnecessary to examine the requirements laid down in Rule 61(3) relating to intervention.
30. Consequently, the Court notes that the Application for Intervention cannot be entertained.

V. OPERATIVE PART

31. For these reasons,

THE COURT

Unanimously

Declares the Application for Intervention by Reckya MADOUGOU inadmissible.

Signed by:

Imani D. ABOUD, President;

Blaise TCHIKAYA, Vice-President;

Ben KIOKO, Judge;

Suzanne MENGUE, Judge;

Chafika BENSAOULA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

And Robert ENO, Registrar. 

Done at Arusha, this Thirtieth day of March in the year Two Thousand and Twenty-three, in English and French, the French version being authoritative.

