DISSENTING OPINION OF JUSTICE BEN KIOKO

THE MATTER OF

HOUNGUE ERIC NOUDEHOUENOU v REPUBLIC OF BENIN

APPLICATION NO. 004/2020

RULING ON PROVISIONAL MEASURES

1. The Order of Provisional Measures issued in the case referred to was an important and innovative step forward in the determination of procedural matters at the Court. It has, in fact, given the Court the opportunity, not to proceed to issue an order for joinder of proceedings within the meaning of Rule 62 of the Rules of Court, but to decide, to make one and the same order in the instant case where it was seized with two requests for provisional measures filed on July 19 and August 10, 2021 within the same application.

2. The reason for such a step is to be found in the interests of administration of justice, justified, in this case, by the link between the two requests with the judgment of July 25, 2019 by which the Court of Repression Economic Offenses and Terrorism (CRIET judgment) found the Applicant guilty of the offenses of abuse of office and unauthorised use of title, and sentenced him to a prison sentence of ten (10) years, accompanied by a warrant of arrest as well as a fine in the sum of one billion two hundred and seventy-seven million nine hundred and ninety-five thousand four hundred seventy-four thousand (1,277,995,474) CFA francs. With the solution adopted in this procedural aspect, I agree entirely with my honourable colleagues.

3. In the Request of 19 July 2021, the Applicant prayed for the following provisional measures:

    a) Order the Respondent State to take all appropriate measures to remove all obstacles to his right to health, in particular the obstacles to obtaining his file from the CNHU in complete freedom and all obstacles to medical consultations, medical examinations, hospitalisation, medical follow-up and the surgery he has been waiting for since 2018, and secondly to ensure the effective protection of

his doctors against any prosecution or arrest, failing that, to provide him with the means and a host country where he will receive proper medical unimpeded by the Respondent State.

b) Order the Respondent State to stay arrest warrants and deprivation of liberty until the final decision of this Court on the merits and reparations;
c) Order the Respondent State to apologise to the Court for having pleaded twenty-four (24) imaginary and false facts before the CRIET and before this Court.
d) Order the Respondent to produce, without delay, and "through the Registry of the Court," the entire report of the judicial expert drafted by Mr. ASSOSSOU Pedro d'Assomption and referred to in the judgment of the CRIET;
e) Order the Respondent to implement the above measures within three days of notification of the Court's Order; and to report to the Court on the implementation of this Order within fifteen days of the date of notification of this Order;

4. In the Request of 10 August 2021, the Applicant prayed for the following additional provisional measures:

f) Measures to unblock his bank accounts and remove obstacles to his presence before the Cotonou Court on 2 December 2021;
g) Issuance of the valid identity document in accordance with paragraphs 1123.xiv and 123.xv of the Judgment of 4 December 2020, Application No. 003/2020;
h) Order the Respondent State, under Articles 2(3) and 14(1) of the ICCPR, Article 8 of the UDHR, Articles 7 and 14 of the Charter, to take all appropriate measures to guarantee the Applicant, the effective enjoyment of his right to be heard in his case concerning his right to property, his right to an effective remedy, to legal certainty and to a fair trial before the Cotonou Court at the hearing of 2 December 2021 and subsequent days notwithstanding his absence given the presence of his counsel, the fact that he made his submissions on the merits since 27 October 2017.

5. I also entirely agree with the majority decision with respect to prayers no: b), c), d), e), and g) as set out in paragraphs 3 and 4 above. That is not the case, however, as regards the other measures requested by the Applicant, namely, prayers no: a), f) and h), as I do not agree at all with the majority decision.

6. I am, in fact, dissenting on the decisions rejecting the measures relating to (I) the lifting of obstacles to medical and protective care, and (II) Request to unblock bank accounts and remove obstacles to the applicant's presence at the hearing listed for hearing in December 2021**.** I believe that the rejection of these measures is based on a partial analysis of the facts of the case, and the fact that the Court completely disregarded the link between the measures requested and those previously ordered by the Court in the same Application and which the Respondent State had failed to implement.

I. On the rejection of the measure relating to the removal of obstacles to health care and protection

a) Partial analysis of the facts of the case

7. It is useful to recall that on 21 January 2020, the Applicant filed the Application on the merits together with a first request for provisional measures, in which he alleged the violation of his rights during legal criminal proceedings initiated against him before CRIET. On 6 May 2020, the Court issued a Ruling on this request for provisional measures, ordering a stay of execution of the judgment of CRIET and all other measures of execution until the determination of the merits of Application. The state was also ordered to submit an implementation report. To date, no such report has been received and nothing on record indicates that the Respondent State has implemented the Order for Provisional measures of 06 May 2020.

8. Indeed, the applicant has contended that all the measures requested for arise from the failure of the Respondent State to comply with three Orders for provisional

measures[1] and four judgments[2] of this Court, thus making it "absolutely impossible for him to obtain documents that are necessary for (enjoyment of) his human rights". Being ill, the Applicant asked the Court to order the removal of the obstacles to medical and protective care.

9. The Applicant's arguments in support of his prayers for provisional measures are to be found in three documents, namely, the main Request in Application 004/2020 dated 1 July 2020 (76 Pages), the first request for provisional measures dated 20 July 2021 (89 pages plus annexes) and the second request dated 10 August 2021 (46 pages).

[1] These are the following Ruling for provisional measures: Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, Ruling on provisional measures of 5 May, 2020 - Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, in which the Court ordered "the Respondent State to take all necessary measures to effectively remove all administrative, judicial and political obstacles to the Applicant's candidacy in the forthcoming communal, municipal, district, town or village elections for the benefit of the Applicant"; Application No. 004/2020 - Houngue Eric Noudehouenou v. Republic of Benin – Ruling for Provisional measures of 6 May 2020, in which the Court ordered the Respondent State to "to stay the execution of the judgment of 25 July 2019 of the Court for Repression of Economic Crimes and Terrorism against the Applicant (...)"; Application No. 002/2021, Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin – Ruling for Provisional Measures of 29 March 2021 in which the Court ordered the Respondent State to "stay of execution in respect of Judgments of the Supreme Court of the Respondent State N°209/CA (COMON SA v. Ministry of Economy and Finance and two (2) others) and N°210/CA (Société JLR SA Unipersonnelle v. Ministry of Economy and Finance) of 5 November 2020, and N°231/CA (Société l'Elite SCI v. Ministry of Economy and Finance and two others) of 17 December 2020 until the decision of the Court on the merits";

[2] These are the following judgments: Application 059/2019 - XYZ v. Republic of Benin, Judgment of November 27, 2020, the operative part of which reads, inter alia, "Orders the Respondent State to take necessary measures to bring the composition of COS-LEPI into conformity with the provisions of Article 17(1) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy before any election "; Application 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin - Judgment of December 4, 2020, the operative part of which reads as follows: Orders the Respondent State to take all measures to repeal Law 28 No. 2019-40 of 1 November 2019 revising Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws related to the election in order to guarantee that its citizens will participate freely and directly, without any political, administrative or judicial obstacles, in the forthcoming presidential election without repetition of the violations found by the Court and under conditions respecting the principle of presumption of innocence;; Orders the Respondent State to comply with the principle of national consensus enshrined in Article 10(2) of the ACDEG for any constitutional revision; Orders the Respondent State to take all measures to repeal Inter-Ministerial Decree 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019; Orders the Respondent State to take all necessary measures to ensure cessation of all effects of the constitutional revision and the violations which the Court has found "; Application 010/2020 - XYZ v. Republic of Benin - Judgment of November 27, 2020 and Application 062/2019 - Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin. These two judgments have, in part, a similar operative part: "Orders the Respondent State to take all legislative and regulatory measures to guarantee the independence of the Constitutional Court, in particular with regard to the process for the renewal of their term of office (...), to take all measures to repeal Law No. 2019-40 of 1 November 2019 amending Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws, in particular Law 2019-43 of 15 November 2019 on the Electoral Code, and to comply with the principle of national consensus set forth in Article 10(2) of the ACDEG for all other constitutional revisions".

10. Despite the Applicant's detailed and precise allegations, the Court rejected this measure in a brief analysis which concludes:

> The Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. **However, the Applicant has not provided the Court with any evidence of his poor health other than mere assertions**. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

11. The Court then decides that there is no basis to order the measure requested. This reasoning shows that the Court undoubtedly did not take into consideration the Applicant's personal situation, the extensive submissions the Applicant has made, the reasons he has given for not submitting medical reports as well as his reliance on previous orders rendered by the Court.

12. Regarding his personal situation, the Applicant argues that in order to obtain the proof required by the Court, he would have had no other choice than to go to hospital. However, in doing so, he would have run the risk of being arrested since, by virtue of the arrest warrant, the Applicant remains a wanted person. Furthermore, he asserts that no doctor was willing to prepare a medical report for him because of fear of arrest for harbouring a wanted person and not surrendering him to the authorities. The applicant has also contended that he survived an assassination attempt on his life on 31 October 2018, three armed assailants while in the custody of the respondent State.

13. Therefore, it becomes pertinent to pose the following question: can the Court reasonably require a wanted person, who is in hiding, to produce evidence which requires him to travel and thus expose him to the risk of arrest in execution of an arrest warrant whose execution the Court had previously suspended? The answer is undoubtedly no. The other questions that arise are as follows: What proof was the Applicant required to produce to satisfy the Court that the order for medical access should be granted? Another related question is whether the Applicant has

explained why he could not submit any medical reports in support of his application?

14. Another related question is whether after the Applicant has submitted that under national law he requires an identity card to access medical treatment and official records, the Court can reasonably require him to produce those same records, when it is on record that he has been denied an identity card? To answer these questions, it is important to review the assertions made and the explanations/pieces of evidence provided in support of the requested measures.

b) Assertions Relating to Applicant's current Medical Condition

15. In his very detailed submissions on this issue of medical care, which are summarised very briefly in paragraphs 6, 7 and 8 of the Ruling of this Court, the Applicant has painted the picture of an extremely difficult and dangerous situation with his health continuously deteriorating in circumstances that make it impossible for him to receive urgently needed medical care. With the arrest warrant hanging over his head, he cannot receive needed medical attention; to obtain any medical care he needs an identity document, the right to which was taken away by "decision of the *Inter-Ministerial Order no. 023/MJUDC/SGM/DACPG/SA/023SGG19 of 22 July 2019, which prohibits the issuance of official documents (civil documents and other official documents) to the Applicant, in violation of his human rights protected by the Charter and the UDHR*".[3] Furthermore, he claims to require hospitalisation for closer observation and specialised medical care[4].

16. In his Request, the Applicant asserts that he is

> *at the terminal stage of the internal tissue growth, at which stage he is no longer able to sit properly and is writhing in pain, which is why, after consultation with a magnifying glass and several examinations by introducing medical instruments into the applicant's body, he was admitted to post-*

[3] The request of 20 July 2021, paragraph 67
[4] Ibid Para 61

*operative hospitalization on **October 30, 2021**[5] by Doctor-Professor OLORY-TOGBE, in charge of surgery at the CNHU-HKM, just before the attempt to assassinate him on October 31, 2018, which caused the suspension of this operation. Consequently, the Court can see the suffering that the Applicant has been enduring since 2018 to date because this surgical operation was suspended by the attempted assassination of the Applicant on 31 October 2018 and the Respondent's refusal to ensure the protection of his life and fundamental rights has forced the Applicant to continue to suffer*[6].

17. The Applicant further states that having regard to the obligations of the Respondent and the fact that "*the attempted murder of which the Applicant complains of occurred while he was illegally detained by the Respondent, he requested for effective protection of his fundamental rights on 12 June 2019"*, but no response was received or any action taken by the Respondent State.

18. The Applicant also outlines a number of intended medical interventions that cannot take place because of obstacles put up by the Respondent. First, in addition to the other illnesses for which the applicant is being treated and is awaiting surgery, he claims to be

*suffering from dermatological and neurological problems, as well as psychosomatic disorders and post-traumatic stress disorder with a depressive background, according to the doctors of the CNHU-HKM. **These ailments necessitated the hospitalization of the applicant for increased surveillance and special medical care (PEC) with physiotherapy** **(exhibit n°40 p. 11 to 13).**[7]*

19. Elaborating further on his medical condition, the Applicant contends that

*as a result of the acute right maxillary sinusitis detected in the CNHU-HKM by means of a scanner (**a copy of which will be submitted to the court after the obstacles to the access to the applicant's file have been removed**), the applicant has had to live in a dust-free environment, which the defendant deprives the applicant from November 2021, because by not executing the*

[5] This date must be a typo (perhaps should have been 2020) because the application was filed on 20 July 2021.
[6] The request of 20 July 2021, pparagraph 78
[7] Ibid paragraph 18

decisions of May 06, 2020, application no. 004/2020, September 25 and December 04, 2020, application no. 003/2020, the defendant puts the applicant in incapacity of access to his resources to maintain his healthy habitat, which will aggravate the cephalus and the condition of acute sinusitis diagnosed in him; as such a condition may relate to the brain, its worsening is of a ***life-threatening nature***.[8]

20. The Applicant states that

as long as the Respondent has not executed the order of 06 May 2020, application no. 004/2020, any attempt to obtain his medical file at the defendant's CNHU-HKM, would lead to the arbitrary deprivation of the applicant's liberty. ***Furthermore, since the Respondent did not execute the judgment of 04 December 2020, application no. 003/2020, the Applicant is deprived of obtaining his medical file because the communication of this file is protected, the Applicant has to prove his identity before getting a copy of his medical file,*** *while the Respondent has deprived him of civil or identity documents, despite the fact that the Court has ordered him to annul the Inter-Ministerial decree which forbids the Applicant to obtain the documents of the authority[9].*

21. The Applicant appeals to the Court by virtue of article 4 (2) of the ICCPR, article 3 (1) and article 27 (2) of the Protocol, and of its powers as protector of fundamental rights, to ensure that his continued "*submission to inhuman and degrading treatment with consequences as unpredictable as they are harmful to the health and life of the applicant",* are brought to an end "*otherwise the Court's function of protecting fundamental rights and providing emergency jurisdiction would be futile, since the Court would have allowed a violation of an imperative human rights norm to persist".*[10]

22. Indeed, the Applicant has alluded to the possibility of death if he does not receive medical attention. He states that "in the course of suffering from May 31, 2021, in the absence of being able to acquire the health care medicines, due to violation of the *judgment of December 4, 2020, application no. 003/2020, rendered by the*

[8]Ibid paragraph 107
[9] Ibid Para 67
[10] Ibid Para 90. The Applicant also relies on *"Article 4(2) and Article 7 of the ICCPR (prohibition of torture and other cruel, inhuman or degrading treatment or punishment,...)" and on the Court's* order of 17 April 2020, Request n° 062/2019, Sebastien G. AJAVON v. Benin, § 67.

*Court in favour of the Applicant, ….. **without health care, the irreparable prejudices go from the degradation of the state of health to the unpredictable situations, including death,** whereas these two situations are irreparable, it is an evidence that does not need demonstrations".*[11]

23. He also asserts that

> there is urgency because without health care and with the obstacles to the Applicant's right to health on the sole basis of the non-execution of the decisions of May 6, 2021, application no. 004/2020 and September 25, 2020, application no. 003/2020, **the Applicant runs the risk of death,** this is indisputable evidence, so that there is no need *to* detain or otherwise document this urgency[12].

c). The Applicant has explained the Failure to Submit Medical reports

24. The Applicant has explained that he cannot have access, even with due diligence, to any documentation relating to his medical condition. He asserts that his medical dossier is at the Respondent's CNHU-HKM , which he cannot access because he needs to go there in person, thus risking arrest and detention. Furthermore, to access those records, he needs to produce an identity card, which he has been denied in spite of a previous order of provisional measures by the Court. Apart from the probable deprivation of liberty, he fears for his life since the last time he was admitted at that hospital, there was an assassination attempt on him by 3 armed men who are still at large, and which forced the intended surgery to be abandoned.

25. In this regard, the Request of 20 July 2021, unequivocally states that:

> apart from the proof that he has provided in relation to his state of health, **the Applicant has not produced the entirety of his medical file because the Respondent obstructs it.** Indeed, the Respondent not having executed the decisions of the Court rendered in favor of the Applicant, **the latter cannot**

[11] The request of 20 July 2021, paragraph 96.
[12] ibid, paragraph 79. The Applicant has also alluded to the possibility of death in paragraphs 40, 102, 110 and 112 of the Request of 20 July 2020 and in the Addedum to the main Application filed on 28 February 2020.,

> **access his medical file with the CNHU-HKM of the Respondent, to produce it in the Court for several years."**[13] Furthermore, "concerning the drugs that the applicant may have acquired between November 2018 and April 2021 before being refused access to said drugs for default of identity documents that the Respondent did not issue to him in violation of the December 04, 2020 Ruling, request no. 00312020, the applicant did not produce proof of acquisition because this proof indicating the place of acquisition, will lead to his arbitrary deprivation of liberty, since the defendant has not complied with decisions of the Court rendered in favor of the applicant including the order of May 6, 2020.[14]

26. The Applicant also points out that by not executing the Courts order of May 6, 2020, in request no. 00412020 and the judgment of December 4, 2020, in request no 003/2020, the Respondent State has:

> arbitrarily put obstacles preventing the applicant to have access to his medical file with the CNHU-HKM, whereas this file is necessary for the doctors attending the applicant in order to allow them to treat the applicant taking into account all the history of his medical file in order to avoid medical errors.[15]

27. The Applicant also contends that the Respondent state has put him in the untenable choice of requiring him

> either to continue to suffer persecution with arbitrariness, inhuman and degrading treatment and the risk of death weighing on his life (the first untenable choice) or to exercise his right to flee persecution provided for in Article 14 of the UDHR, and thus endanger his vital prognosis for lack of adequate care and means of subsistence blocked by the CRIET (the second untenable choice).

28. The Applicant has also offered to supply these reports from the CNHU-HKM "**after the obstacles to the access to the applicant's file have been removed".**[16]

[13] The Request of 20 July 2021, paragraph 16.1
[14] Ibid Paragraph 16.2
[15] Ibid paragraph 65
[16] Ibid paragraph 103

d) Conclusion on Prayer for Access to Medical Care

29. From the forgoing summary, it is clear that the Applicant has not only provided a detailed exposition of his current medical condition, but also clearly explained away the reasons why he did not and cannot supply copies of medical reports. Indeed, he contends that the medical file is required by his doctors who are secretly treating him but he does not have access to it.

30. It is my considered opinion that the Applicant's reasoning as to why he cannot supply any documentary evidence is compelling. The detailed explanation by the Applicant cannot be considered as "mere assertions" as indicated in the ruling of the majority. The Court cannot simply reject the requested measures simply on the basis that evidence(medical reports) were not submitted. The Court is obliged to assess the reasons given by the Applicant, as to why he did not submit the reports, which surprisingly was not done. Furthermore, the Respondent has not challenged any of the Applicant's assertions or even attempted to demonstrate that the applicant has been lying or misrepresenting his situation in spite of having been afforded an opportunity to do so.

31. In these circumstances, why would the Court, choose to disbelieve the Applicant bearing in mind the importance accorded to the right to health in international law, due to the fact that it is related intimately to the enjoyment of several other rights?[17]. Without good health, so to speak, one is compromised in claiming other rights. To reason in reverse, if the Applicant had been in detention, it would have been the responsibility of the government to provide him with adequate medical care.

32. To this end, this responsibility persists even for persons not under detention except they have some leverage to choose medical facilities with greater latitude as compared to persons under detention, which is not the case here because the Applicant cannot access any medical facilities for the stated reasons. Furthermore, as the Applicant asserts in his request, **"in matters of the right to**

[17] 2 § 3 (c27) of the ICCPR, 11 of the UDHR, 2 and 13 (3) of the Charter

life, it is also necessary to act preventively in order to avoid subjecting the Applicant to a situation that may lead to his death for the sole reason of denial of health care"[18] due to the violation of the decisions of the Court**.**

33. In my view, the right to general health is implicated and the measure requested should have been granted.

34. The Applicant has also in addition to measures for himself, specifically requested the Court to *"enjoin the respondent to take all appropriate measures to remove all obstacles to the applicant's right to health, in particular, the obstacles to obtaining the applicant's file from the CNHU in full freedom and the obstacles to medical consultations, medical examinations to be carried out by the applicant, hospitalization, medical follow-up and the surgical operation for which he has been* ***awaiting surgery since 2018****,…….. and* ***also to ensure the effective protection of his doctors against prosecution and arrest within the meaning of articles 1 and 6 of the Charter."*** This aspect of the request which also strengthens the argument for grant of an order for protective medical care has not been addressed by the Court.

35. Finally, the Court has not addressed the link between **the current requests to Respondent's failure to implement previous decisions of the Court.** Even though the Applicant has specifically requested for this context to be taken into account, the Court has neither considered it nor pronounced itself on it .

36. The Applicant has asked the Court to consider the two requests in the light of their historical context particularly the impact of the previous orders of the Court that were not implemented, and which obliged the applicant to submit to the Court two other requests for interim measures. The Applicant further asserts that:

> The lack of medical records of the Applicant results only from the failure to execute the decisions of the Court on the part of the Respondent….. which is detrimental to his right *to* health and life[19].

[18] Paragraph 102
[19] The Request Para 40

37. Had the Court considered the context of this matter, I believe that it would have come to the conclusion that each and every aspect of the requests for provisional measures of 19 July 2021 and 10 August 2021, arise from implementation of the CRIET's Judgment of 25 July 2019, whose execution the Court had ordered be stayed. In these circumstances the Court would have had no difficulty in granting the measures sought.

II. On the measures to Unblock Applicant's Bank Accounts and Remove Obstacles to his Presence Before the Cotonou Court on 2 December 2021

38. In the Request for provisional measures of 10 August 2021, the Applicant submits that in execution of the CRIET's Judgment of 29 July 2019, all the accounts to which he is a signatory were blocked and arrest warrants issued against him, whereas by the Ruling on provisional measures of 6 May 2020, this Court had ordered a stay of execution of the said judgment. Even though the Applicant has specifically requested for this context to be taken into account, the Court has neither considered it nor pronounced itself on it.

39. In dealing with this request, the Court, after a very brief analysis recalls that it had issued an order on 6 May 2020 in the present Application No. 004/2020 to stay execution of the Judgment of 25 July 2019 of CRIET, which inter alia had blocked the Applicants bank accounts, and finds as follows:

> The Court observes that the CRIET Judgment issued an order to freeze the Applicant's bank accounts. **It further notes that the Applicant did not provide evidence that his bank account was blocked in execution of the CRIET judgment.**
>
> Regarding the obstacles to his presence in court as a result of the CRIET judgment, the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again.
>
> Accordingly, the Court dismisses this request.

40. The Court itself acknowledges in its ruling that the CRIET judgment of 25 July 2019 contained an order for freezing of the Applicant's bank accounts. The

question that must be asked is whether it is reasonable to assume that this order has not been accrued out since July 2019? What is the reason for disbelieving the Applicant even when the Respondent State has not challenged that assertion?

41. After a careful perusal of the two requests for provisional measures, it is clear that the conclusion by the majority that the Applicant did not provide evidence that his bank account was blocked in execution of the CRIET judgment has been reached only because the explanations given were ignored and not assessed.

42. In the Request of 10 August 2021, the Applicant has explained that "**CRIET ordered the banks to block the bank accounts of which the applicant is a signatory, as the applicant has already pointed out to the Court in his application and in paragraph 148 of the addendum of February 20, 2020."** Further, as a result of this blocking of the applicant's accounts, "**he and his family are exposed to irreparable damage and to unforeseeable situations of violation of their rights"** protected by articles 11 of the ICESCR, 23 of the UDHR, 4, 6, 7, 23 and 24 (1) of the ICCPR, 11 (1), 19 and 20 of the African Charter on the Rights and Welfare of the Child (ACRWC), 4 of the Protocol to the African Charter on the Rights of man and peoples relating to women's rights, 15 and 16 of the Charter (title b.) **even though this blocking of the applicant's accounts and assets is an arbitrary obstacle to the above human rights of the applicant and of his family**" [20].

43. The Applicant acknowledges that "**the Court may find that the applicant has not attached to this request for interim measures the statements of his bank accounts and other documents** because on the one hand, since the defendant has not executed the measures … rendered in favour of the applicant [by the Court], **the applicant cannot obtain a valid identity card whereas without a valid identity card the applicant cannot obtain from his banks his bank statements and other documents which the Court may need; but the Court can request its documents directly from the Banks; in this case, please the Court to notify the applicant so that he indicates to the Court all the Banks where he has accounts and assets**."

[20] Request of .. August paragraphs 15, 16, 17 and 17.1.

44. The Applicant cannot be clearer than this as to why he cannot supply evidence of freezing of his accounts. Apart from the fact that he has been in hiding, without any identity card he cannot access any official services.

45. The Applicant also contends that the other way in which he would have received the documents indicating the freezing of his accounts by CRIET was through the Bailiff.

46. Relying on the judgment of the ECOWAS Court of Justice in Mohammed Sambo Dasuki v. Nigeria, the Applicant contends that the

> The bailiff must do all due diligence to achieve the delivery of his exploit to the person of the person concerned and give him a copy. The judicial officers are required to deliver themselves or through their sworn clerks, the exploit and the copies of documents which they have been charged to serve by conforming to the texts in force.[21]

47. By this assertion, the Applicant is basically arguing that the Bailiff did not serve any documents on him, after freezing his accounts, presumably for failure to pay the fine of 1,277,995,474) CFA francs. Therefore, if the applicant could not access the document at the bank and did not receive it from the bailiff, presumably because he is in hiding, then he had no other known way of accessing it.

48. Regarding the statement by the Applicant that he will run out funds in November 2021, this must be assessed in its proper context. His overall submissions as a whole point to the fact that he is currently facing serious financial challenges but the situation will become critical in November 2021.

49. The Applicant has underlined that the Respondent state has "**endangered his vital prognosis for lack of adequate care and means of subsistence blocked by the CRIET.**"[22] He has also contended that "due to the non-execution of the decisions of May 6 and May 25, 2020, applications no. 004/2020 and no.

[21] Judgment n° ECW/CCJ/JUD/23/16, affaire COL. Mohammed Sambo Dasuki c. Nigeria, p.48
[22] Request of 20 July 2020, pparagraph 40

003/2020, the Respondent has financially impaired the Applicant's right to health, because **it is obvious that without financial means the petitioner cannot pay for doctors' fees, medical analyses, hospitalization, medicines, rehabilitation, nor pay for the surgical operation to eliminate the may in its final stage and its consequences, etc**[23]

50. With regard to the blocking of his accounts the Applicant has made the following assertions:

> **the Respondent has deprived him of sufficient financial means to meet his health care needs and his right to an adequate standard of living, as he has already reiterated in other pleadings (application no. 032/2020) and in the third complaint of the obstacles posed by the Respondent**[24]**.**
>
> the blocking of his accounts is arbitrary within the meaning of human rights and Articles 4 (m) of Constitutive Act and 4 (1) of ACDEG because blocking bank accounts of the applicant results from a denial of justice since the judgment of the CRIET is based on imaginary and untrue facts and the defendant has not been able to provide proof of the reality of his allegations neither during the internal proceedings nor before this Court, **whereas this arbitrary blocking creates irreparable damage to the rights of the applicant and his family**.
>
> Except for a miracle, the Applicant is deprived of the financial means to afford the food necessary for his health and life, which **entails an imminent violation of his right to an adequate standard of living, his right to life and health because of the non-execution of the decisions of the Court rendered in his favour.**[25]
>
> The Respondent has thus continuously deprived the applicant of the financial means to treat himself, whereas it is obvious that without financial means the applicant cannot treat himself, and the defendant has never provided him with a single CFA franc to purchase the health care medication provided by the doctors.[26]
>
> Consequently, faced with the requirement of the applicant's presence by the Cotonou Tribunal despite the presence of his counsel, there is urgency as long as the Respondent has not removed the obstacles mentioned in paragraphs

[23] Ibid paragraph 58
[24] Ibid paragraph 58
[25] Ibid paragraph 98
[26] Ibid Paragraph 52

120 to 126 above for the applicant's presence before the Cotonou Tribunal in full enjoyment of his rights to liberty protected by Articles 6 and 12 of the Charter[27].

51. Whether the critical need for access to his bank account is now or in December is irrelevant. The jurisprudence of the Court is to the effect that "urgency, consubstantial to extreme gravity, means "**a real and imminent risk that irreparable harm wilt be caused before it renders its final judgment**"[28]. Furthermore, the Court has also held there "there is an urgency whenever acts likely to cause irreparable harm can **"occur at any time" before the Court renders a final judgment in the case[29]**.

Court Hearing in December 2021

52. Regarding the hearing on 2 December 2021, the Applicant submits that, he cannot appear personally at a real estate legal proceeding pending before the Cotonou Court, where the said Court has ordered he be present at the hearing of 2 December 2021, failing which, he may irreversibly forfeit ownership of the said property.

53. On this issue, the Court has found in Paragraph 72 of its Ruling as follows:

> Regarding the obstacles to his presence in court **as a result of the CRIET judgment,** the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again.

54. First, I have not seen anything on record suggesting that the hearing in December arises from the CRIET judgment. The Applicant has contended in the second request of August 2021that it is a property dispute for which a hearing

[27] Ibid paragraphs 132

[28] See Application 004/2020, Houngue Eric Noudehouenou v Benin (Ruling of 6 May 2020), § 37& 38; See also. ICJ, implementation of the Convention for the Prevention and Punishment of the Crime of Genocide Gambia v Myanmar, 23 January 2020, § 65;

[29] Ibid § 38;

took place in the Cotonou Court for which he had not been given prior notice. He states as follows:

> On the second hand, concerning the urgency, the irreparable damage and the interests of justice…it becomes irreparable damage from December 2, 2021 because it is on July 15, 2021 that the Court of Cotonou required the physical presence of the applicant under penalty of arbitrarily depriving him of his right to property then confirmed by the applicant's land title (Exhibit 121), the acts of the Authority presented to the Beninese judge (Exhibits 122 to 123) since Article 146 of the Land Code provides that the Applicant's Land Title is final and unassailable.[30]

55. In view of the foregoing, the Court ought to have granted the prayer for unblocking the Applicants Bank Accounts..
56. With regard to the attendance at the Cotonou Court hearing hearing on 2 December 2021, the Court should have ordered removal of all obstacles to his presence before the Cotonou Court. Furthermore, in the alternative, the Court could also have reiterated its previous ruling and discharged the Applicant from any obligation to attend the Cotonou Court hearing on 2 December 2021, until the respondent State has implemented its previous decisions.,.

Conclusion on the measures sought.

57. The failure of the Respondent State to implement the previous decision sof the Court, have put the Applicant in his current untenable position, where, on the one hand, he is sick and cannot receive treatment and risks arrest and detention if he attends Court, and, on the other hand, risks losing his property if he does not attend Court. Needless to say, he is only in this situation because of the cations or inactions of the Respondent State. In such circumstances, I believe that had the Court seriously considered the evidence submitted and the assertions made by the Applicant, it would have granted the orders sought for access to medical care, for unblocking his bank accounts and for removing obstacles to his attendance at the Cotonou Court hearing on 2 December 2021.

[30] Paragraph 129

Signed:

Ben KIOKO, Judge;

Done at Dar es Salaam, this Twenty Second Day of November in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.