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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		

THE MATTER OF

THOMAS BONI YAYI

v.

REPUBLIC OF BENIN

APPLICATION No 023/2019

ORDER FOR PROVISIONAL MEASURES

8 AUGUST 2019



000177

The Court composed of: Sylvain ORÉ, President; 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, Imani D. ABOUD - Judges; and Robert ENO, Registrar;

In the matter of

Thomas Boni YAYI

Represented by

Barrister Renaud Vignilé AGBODJO, Member of the Benin Bar Association

versus

REPUBLIC OF BENIN

represented by:

Mr. Iréné ACLOMBESSI, Judicial staff at the Treasury
after deliberation

issues the following Order:

I. THE PARTIES

1. On 11 June 2019, the Court received an Application filed by Thomas Boni Yayi (hereinafter referred to as "the Applicant") for alleged violation of his human rights. The Applicant is a former President of the Republic of Benin.
2. The Republic of Benin (hereinafter referred to as "the Respondent State"), became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986, 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, the Respondent State also filed the Declaration under Article 34(6) of the Protocol, through which it accepted the Court's jurisdiction to receive applications from individuals and Non-Governmental Organizations.

II. SUBJECT OF THE APPLICATION

3. The Applicant alleges that on 1 May 2019, the police and army officers surrounded his residence in an attempt to arrest him. This attempted arrest angered the surrounding residents and the Applicant's supporters organised a protest. In an attempt to disperse the crowd, the army fired live bullets, injuring several protesters, some of whom ended up dying as a result of their injuries.
4. The Applicant further alleges that, on 2 May 2019, army officers again opened fire on unarmed protesters who came to support him, leading to massive loss of human lives and mass detentions.
5. Thereafter, on 19 May 2019, the Applicant seized the Community Court of Justice of the Economic Community of West African States (ECOWAS Court of Justice) for an expedited trial to find that his fundamental rights have been violated and to be granted reparations.
6. The Applicant also alleges that he received a letter from the Investigating Judge of the 4th Chamber of the Cotonou Court of First Instance, First Class, in charge of investigating the matter of post-election violence of 1 and 2 May 2019, that, he (the Investigating Judge) wishes to question the Applicant at his residence on 7 June 2019 at 3 p.m. The Applicant alleges that, despite opposition from his Counsel, that he cannot be questioned due to health reasons, he was questioned and placed under house arrest without any legal basis.
7. The Applicant contends that the demonstrators who were illegally arrested between 1 and 13 May 2019 appeared before the Judge in charge of cases of *flagrante delicto* on 28 May 2019 and that the period of their detention exceeds

the period legally provided under Article 402 of the Benin Criminal Procedure Code.

8. The Applicant states that, on the night of 21 to 22 June 2019, the police removed all the barriers that they had erected around his residence thereby allowing him to go to France for medical treatment.

II. ALLEGED VIOLATIONS

9. The Applicant alleges that the Respondent State violated the following rights contrary to international instruments to which it is a party:
 - i. The right to life and physical integrity of persons guaranteed under Article 4 of the Charter;
 - ii. The right to freedom of demonstration and to hold meetings guaranteed under Article 11 of the Charter;
 - iii. The right to freedom of expression under Article 1.(l) of the Protocol A/SP1/12/01 of the ECOWAS Protocol on Democracy and Good Governance as an additional Protocol to the Preventive Mechanism, Management, Settlement of Conflicts, and the Maintenance of Peace and Security;
 - iv. The right to be tried within a reasonable time guaranteed under Article 402 of the Benin Criminal Procedure Code and Article 7(1) d of the Charter;
 - v. Rights guaranteed under Articles 7 and 26 of the Charter;

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. On 11 June 2019, the Court received a letter "relating to an additional request for provisional measures" and on 18 June 2019, the Applicant filed a further information note to the Court following a communiqué at a press conference

given by the Respondent State's Prosecutor on the situation of the former Head of State.

11. The Respondent State was served with the Application on 20 June 2019 and they were also notified of the request for provisional measures and given seven (7) days to file their response to the request.
12. The Respondent State filed its submissions regarding the Request for provisional measures on 15 July 2019 after the dateline given by the Court.
13. On 26 June 2019, the Applicant filed further information to the Court on the state of the situation.

IV. ON JURISDICTION

14. When seized of an Application, the Court shall conduct a preliminary examination of its jurisdiction pursuant to Rule 39 of the Rules and Articles 3 and 5(3) of the Protocol.
15. However, as regards provisional measures, the Court does not need to ensure that it has jurisdiction on the merits of the case but simply has to ensure that it has *prima facie*¹ jurisdiction.
16. In terms of Article 5(3) of the Protocol, "the Court may entitle relevant non-governmental organizations (NGOs) with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol".
17. As mentioned in paragraph 2 of this Order, the Respondent State is a party to the Charter, the Protocol and has also made the Declaration accepting the jurisdiction of the Court to receive applications from individuals and Non-

¹ Application N° 002/2013, Order of 15 March 2013 for provisional measures, African Commission on Human and Peoples' Rights v. Libya (Here-in after referred to as « *African Commission on Human and Peoples's Rights v. Libya, Order for provisional measures* ») §. 10 Application N° 024/2016, Order of 3 June 2016 for provisional measures, Amini Juma v. The United Republic of Tanzania (Here-in after referred to as « *Amini Juma v. The United Republic of Tanzania, Order for provisional measures* »), § 8.

Governmental Organizations pursuant to Article 34 (6) of the Protocol read jointly with Article 5(3) of the Protocol.

18. In the instant case, the rights claimed by the Applicant to have been violated are protected under the Charter and the ECOWAS Protocol (paragraph 9 of this judgment), these being instruments which the Court is empowered to interpret and apply pursuant to Article 3(1) of the Protocol.
19. In light of the above, the Court finds that it has *prima facie* jurisdiction to hear the application.

IV. ON THE REQUEST FOR PROVISIONAL MEASURES

20. The Applicant prays the Court to :
 - i. Declare the Application admissible;
 - ii. Declare that it has jurisdiction;
 - iii. Grant him leave, as a victim, to join this application fully and entirely with Application No. 021/2019 of 13 May 2019 pending before this Court;
 - iv. Stay any proceedings, investigation and judgment against the Applicant, against Mr. Guy Mitokpe, former Member of Parliament and Member of the Opposition and the sixty four (64) detained persons;
 - v. Order bail for demonstrators who were arbitrarily arrested, until the judgment on the merits of Application No. 021/2019 is rendered;
 - vi. Order the Respondent State to report to the Court within fifteen (15) days on the measures taken to implement the provisional measures ordered;
21. The Respondent State for its part raised two objections, on admissibility of the application pursuant to Article 56 of the Charter and Rule 40 of the Rules of Court.

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

“In cases 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”.
23. Rule 51(1) of the Rules provides that:

“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”.
24. The Court notes that it is incumbent on it to decide in each case whether in light of the circumstances surrounding the case it can exercise the jurisdiction conferred on it by the above mentioned provisions.
25. In the instant case the Court notes that the Applicant has made several prayers in the request for provisional measures.
26. Having determined its *prima facie* jurisdiction, the Court reserves the right to determine the request for a joinder of Applications 021/2019 and 023/2019 at a later stage of the proceedings before this Court.
27. As regards the prayer to remove all obstacles to the freedom of movement of the Applicant by removing all the forces of law and order and the military equipment around his house the Court has been informed that the police barriers were removed on the night of 21 to 22 June 2019, thereby allowing the Applicant to go to France for medical treatment, accordingly, the Court is of the opinion that this prayer has become moot.
28. Regarding the prayer to defer all proceedings, investigations and judgment against the Applicant, Mr. Guy Mitokpe, former Member of Parliament and Member of the Opposition and the sixty four (64) detained persons, the Court notes that regarding his personal situation, the Applicant invoked health reasons which make it impossible for him to respond to the summons from the Judge.

The Court further notes that the Respondent State allowed the Applicant to leave the country for medical treatment.

29. The Court will consider the applicable law relating to provisional measures which are specific in nature. They are of a preventive nature and do not prejudice the merits of the application. The Court cannot order them pendent lite except when the basic conditions are met: extreme gravity, urgency and prevention of irreparable harm on persons. The Court finds that apart from health reasons invoked, the circumstances of the case do not portray a situation of extreme gravity which may lead to irreparable harm for the Applicant and the other above mentioned persons. The prayer is therefore dismissed.
30. As regards the prayer for the provisional release of the demonstrators arbitrarily arrested until the judgment of Application No. 021/2019 is rendered, the Court notes that the Applicant has not adduced evidence to justify the extreme gravity of the situation, and in the circumstances of this case, the prayer concerns measures to be ordered after consideration of the merits of the case. Accordingly, this prayer is also dismissed.

V. OPERATIVE PART

31. For these reasons,

THE COURT,

Unanimously,

Declines to issue an order for provisional measures

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Signed:

Sylvain ORE, President;

Ben KIOKO, Vice-President

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

M.-Thérèse MUKAMULISA, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise Tchikaya, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

and Robert ENO, Registrar.

Done at Arusha, this 8 day of the month of July 2019, in English and French, the French text being authoritative.

