

## African Court on Human and Peoples' Rights

X .Y .Z

V / Republic of Benin

Application 059/2019

### Dissenting Opinion joined to Order of 02 December 2019

1. In the above-mentioned Order *X Y Z v. the Republic of Benin*, I beg to disagree with the decision of the majority of the judges of the Court on two main issues, that is, deciding not to grant the provisional measures sought and I do not agree with the draft of the operative part.

#### **i) Deciding not to grant the provisional measures sought**

2.) It, in fact, emerges from the Order that the Applicant prayed the Court to "order the Respondent State to suspend deliberations on the administrative structure known as the Orientation and Supervision Board established by the constitutional Court in view of the municipal and local elections and to abstain from any act or action which could lead to irreparable harm".

3.) Article 27(2) of the Protocol states that "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". Furthermore, Rule 51(1) of the Rules of the Court provide 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".

4.) By definition, provisional measures are measures taken under emergency situations without any prejudice to the merits to avoid irreparable harm and whose effects will cease with the decision rendered by the Court on the merits of the case before it. The urgency is determined by the irreparable or aggravated prejudice and the possibility of reinstating the rights on the date the decision on the merit is rendered.

5.) It emerges from the facts which constitute the basis for the request for provisional measures that the Applicant, in his Application on the merits, prayed the Court to order the State of Benin to establish independent and impartial electoral organs, to find that the Respondent State violated his rights to freely participate in the governance of the public affairs of his country, of equal protection of the law, the right to national and international peace and security and the African Charter on Democracy, Elections and Good Governance.