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| AFRICAN UNION   |  | UNION AFRICAINE |
| الاتحاد الأفريقي  |   | UNIÃO AFRICANA  |
| <b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS</b><br><b>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b> |   |                 |

**APPLICATION FOR INTERVENTION BY REPUBLIC OF MAURITIUS**

**APPLICATION FOR INTERVENTION NO. 002/2020**

**IN THE MATTER OF**

**BERNARD ANBATAAYELA MORNAH**

**V**

**REPUBLIC OF BENIN**

**BURKINA FASO**

**REPUBLIC OF COTE D'IVOIRE**

**REPUBLIC OF GHANA**

**REPUBLIC OF MALI**

**REPUBLIC OF MALAWI**

**REPUBLIC OF TANZANIA**

**REPUBLIC OF TUNISIA**

**APPLICATION NO 028/2018**

**ORDER**

**(INTERVENTION)**

**25 SEPTEMBER 2020**



**The Court composed of:** Ben KIOKO, Vice-President; Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA, Chafika BENSAOULA, Blaise TCHIKAYA, and Stella I. ANUKAM -Judges; and Robert ENO, Registrar.

In accordance with 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 8(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Sylvain ORÉ, Justice Rafaã BEN ACHOUR, Justice Tujilane R. CHIZUMILA, and Justice Imani D.ABOUD, members of the Court and nationals of Cote d'Ivoire, Tunisia, Malawi and Tanzania, respectively, did not hear the Application.

Application by REPUBLIC OF MAURITIUS

Represented by:

Ambassador H. DILLUM, Secretary for Foreign Affairs of Republic of Mauritius

For intervention in the matter of:

Bernard Anbataayela MORNAH

versus

- i. Republic of Benin, represented by Ms Iréné ACLOMBESSI, Judicial agent of the Trésor, Office within the General Directorate of the Treasury and Public Accounts;
- ii. Burkina Faso, represented by Mr. Yao LAMOUSA, Legal Agent of the Treasury;
- iii. Republic of Côte d'Ivoire, represented by Madame Kadiatou Ly SANGARE, Judicial agent of the Trésor;

- iv. Republic of Ghana, represented by Dorothy AFRIYIE-ANSAH (Mrs), Chief State Attorney;
- v. Republic of Mali, represented by Mr. Youssouf DIARRA, General Directorate of State Litigation;
- vi. Republic of Tunisia, represented by Mr. Farhad KHALIF, Director General for Legal Affairs;
- vii. United Republic of Tanzania, represented by Dr Clement MASHAMBA, The Solicitor General, Office of the Solicitor General; and
- viii. Republic of Malawi, unrepresented.

after deliberation,

*issues the following Order:*

#### **I. BACKGROUND**

1. The Republic of Mauritius is a Member State of the African Union (hereinafter referred to as “the AU”) and brings this Request for Leave to Intervene in the Application filed by Bernard Anbataayela Mornah (hereinafter referred to as “the Applicant”). Together with its Request, it also makes its submissions on the merits of the main Application.
2. On 14 November 2019, the Applicant, a Ghanaian national and the National Chairman of the Convention of People’s Party a political party in Ghana filed his Application against the Republic of Benin, Burkina Faso, the Republic of Côte d’Ivoire, the Republic of Ghana, the Republic of Mali, the Republic of Malawi, the United Republic of Tanzania and the Republic of Tunisia (hereinafter collectively referred to as “the Respondent States”).
3. The Respondent States became Parties to the African Charter on Human and Peoples’ Rights (hereinafter the “African Charter” or “the Charter”) as follows: Benin – 21 October 1986; Burkina Faso – 21 October 1986; Côte d’Ivoire –31

March 1992; Ghana –1 March 1989; Mali –21 October 1986; Malawi 17 November 1989; Tanzania – 21 October 1986; and Tunisia – 21 October 1986.

4. The Respondent States all became Parties to the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter "the Protocol"), as follows: Benin 22 August 2014; Burkina Faso – 25 January 2004; Cote d'Ivoire – 25 January 2004; Ghana –25 January 2004; Mali –25 January 2004; Malawi –9 September 2008 –; Tanzania –29 March 2010; Tunisia –21 August 2007.
5. All the Respondents have also made a Declaration under Article 34(6) of the Protocol permitting individuals and Non-Governmental Organisations (NGOs) to directly bring cases against them before the Court (hereinafter referred to as "the Declaration") as follows: Benin: 8 February 2016; Burkina Faso: 28 July 1998; Côte d'Ivoire: 23 July 2013; Tanzania: 23 March 2010; Ghana: 10 March 2011; Malawi: 9 October 2008; Mali: 19 February 2010; Tunisia: 13 April 2017.

## **II. SUBJECT MATTER OF THE REQUEST**

### **A. Facts of the Matter**

6. The Request for Leave to Intervene is in relation to the Application filed on 14 November 2018 by the Applicant wherein he alleges that by failing to protect the sovereignty, territorial integrity and independence of the Sahrawi Arab Democratic Republic (hereinafter, SADR), the Respondent States have violated Articles 3 and 4 of the Constitutive Act of the African Union; Articles 1, 13, 19, 20, 21, 22, 23 and 24 of the Charter; Articles 1 and 2 of the International Covenant on Civil and Political Rights and Articles 1 and 2 of the International Covenant on Economic, Social and Cultural Rights.
7. The Republic of Mauritius requests that the Court should allow it to intervene in this matter alleging that it has interest in the Application as it is an AU Member

States whose decolonisation is still not completed and given the *erga omnes* character of the right to self-determination.

#### **B. Intended Intervener's Prayers**

8. In its Request for Leave to Intervene, the Republic of Mauritius prays the Court "for leave to intervene to make written submission in respect of the right to self-determination and decolonization" in accordance with Article 5(2) of the Protocol, Rule 33 (2) and Rule 53 of the Rules of the Court.

#### **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

9. The Request for intervention was filed on 31 August 2020.
10. On 8 September 2020, the Registry sent a notice to the Parties requesting them to submit their observations, if any, on the request for intervention, within fifteen(15) days of receipt of the notice.
11. No observations were received from any of the Respondent States or any other entity within the time prescribed by the Court

#### **IV. PRIMA FACIE JURISDICTION**

12. Pursuant to Article 3(1) of the Protocol, the jurisdiction of the Court extends to "all cases and disputes submitted to it concerning the interpretation and application of the Charter [the] Protocol and any other relevant human rights instrument ratified by the States concerned." Further, in terms of Rule 39(1) of the Rules, "the Court shall conduct preliminary examination of its jurisdiction ... of the Application in accordance with Article 50 and Rule 40 of these Rules".
13. The Court observes that in the instant Application, the Applicant alleges violation of human rights and freedoms protected by the Charter and the

Application is filed against Respondent States which have ratified the Protocol and deposited the Declaration under Article 34 (6) of the same. The Court thus finds that it has *prima facie* jurisdiction to examine the Application.

14. As regards the Request for Leave to Intervene, the Court notes that Article 5(2) of the Protocol provides as follows: "When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join." This is reiterated in Rule 33(2) of the Rules which declares that: "In accordance with Article 5(2) of the Protocol, a State Party which has an interest in a case may submit a request to the Court to be permitted to join in accordance with the procedure established in Rule 53 of these Rules".
15. Rule 53 of the Rules stipulates that:
  1. An application for leave to intervene, in accordance with article 5 (2) of the Protocol shall be filed as soon as possible, and, in any case, before the closure of the written proceedings.
  2. The application shall state the names of the Applicant's representatives. It shall specify the case to which it relates, and shall set out:
    - a) the legal interest which, in the view of the State applying to intervene, has been affected;
    - b) the precise object of the intervention; and
    - c) the basis of the jurisdiction which, in the view of the State applying to intervene, exists between it and the parties to the case.
16. The Court notes that the determination of whether an intervenor has interests in a case in terms of Article 5 (2) of the Protocol and Rule 53 of the Rules depends on the nature of issues involved in the case, the identity of the intervenor and the potential impact of any of the decision of the Court on the intervenor and third parties.<sup>1</sup>

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<sup>1</sup> Jurisdictional Immunities of the State (*Germany v. Italy: Greece intervening*), Application by the Hellenic Republic for Permission to Intervene, ICJ, Order of 4 July 2011, § 22.

17. The Court observes that the instant Application mainly relates to the rights and freedoms of the people of SADR, which the Applicant alleges have been violated as a result of the continued occupation of the territory of SADR by the Kingdom of Morocco and the failure of the Respondent States to protect the sovereignty, territorial integrity and independence of SADR. In its request, the Republic of Mauritius avers that, as an AU Member State whose process of decolonisation is still incomplete and considering the *erga omnes* character of the right to self-determination, it should be granted leave for intervention in the Application. It also states that the purpose of its intervention is to make written submissions in respect of the said right to self-determination and decolonization.
18. The Court notes that the instant Application raises issues pertaining to the rights and freedoms of the people of SADR. However, the rights and freedoms alleged to have been violated by the Respondent States' failure to protect the independence and territorial integrity of SADR have wider significance beyond the people of SADR.
19. Indeed, the rights that the Applicant claims to have been violated, specifically, the right to self-determination and freedom from colonisation and oppression, the right of people to freely dispose of their wealth and natural resources, and the right to national and international peace and security protected under Articles 20, 21 and 23 of the Charter, respectively, have particular relevance to the African continent at large due to its colonial past. In addition, the basis of the main Application essentially relates to the decision of African Union, an organization to which the Republic of Mauritius is a Member State, to readmit the Kingdom of Morocco to the Union despite its continued occupation of the territory of SADR.
20. Furthermore, the Republic of Mauritius alleges that its decolonization is not complete yet; thus, making the Application a matter of great importance to it and

its people. In this regard, the Court takes judicial notice of the recent Advisory Opinion of the International Court of Justice (ICJ) on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965<sup>2</sup>, where the ICJ affirmed the *erga omnes* nature of the right to self-determination and that the decolonisation process of the Republic of Mauritius was not lawfully completed under international law.

21. In view of the foregoing, the Court is of the view that the Republic of Mauritius, as a Member State to the African Union has an interest in seeking to intervene in this matter for the purpose of submitting its observations on issues of relevance to the rights and freedoms of its people as well as the people of SADR. The Court, therefore, grants its Request for Leave to Intervene in the instant Application.

## V. OPERATIVE PART

22. For these reasons:

THE COURT,

*Unanimously,*

- i. *Grants* leave for the Republic of Mauritius to intervene in the instant Application;
- ii. *Decides* that the submissions of the Republic of Mauritius on the merits of the main Application is deemed to have been filed.

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<sup>2</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (25 February 2019)



**Signed:**

Ben KIOKO, Vice President;



Robert ENO, Registrar;



Done at Arusha, this Twenty Fifth Day of September in the Year Two Thousand and Twenty in English and French, the English and French texts both being authoritative.

In accordance with Article 28 (7) of the Protocol and Rule 60 (5) of the Rules, the Separate Opinion of Justice Blaise TCHIKAYA is appended to this Order.