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**The Court, composed of:** Imani D. ABOUD, President; Modibo SACKO, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Stella I. ANUKAM, Blaise TCHIKAYA, Dumisa B. NTSEBEZA, Dennis D. ADJEI – Judges; and Robert ENO, Registrar.

In the Matter of

Samiratou MAMA SEIDOU

*Represented by* Mr Renaud Vignilé AGBODJO, Advocate at the Bar of Benin,

Versus

REPUBLIC OF BENIN

*Represented by* Mr Iréné ACLOMBESSI, Judicial Officer of the Treasury,

After deliberation,

*Renders this Ruling:*

## **I. THE PARTIES**

1. Ms Samiratou MAMA SEIDOU (hereinafter referred to as “the Applicant”) is a Beninese national. She alleges human rights violation in connection with the quelling of demonstrations on 1 and 2 May 2019 in Cotonou, which allegedly resulted in the death of her father Assoumana MAMA SEÏDOU, (hereinafter referred to as “the victim”).
2. The Application is filed against the Republic of Benin (hereinafter referred to as “the Respondent State”), 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, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of the said Declaration. The Court has ruled that the withdrawal has no bearing on pending cases or on new cases filed before the entry into force of the withdrawal, one (1) year after the deposit, in this case, on 26 March 2021.<sup>1</sup>

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. It emerges from the Application that Mr Assouma MAMA SEÏDOU, the Applicant's father, decided to join the peaceful demonstration that took place in Cotonou on 1 May 2019 at the home of Thomas Boni Yayi, former President of the Republic, to prevent the arrest of the latter by the security forces. The Applicant avers that her father was fatally shot by security forces, and his lifeless body deposited the next day in the mortuary of the *Centre national hospitalier universitaire* of Cotonou (CNHU-Cotonou) before being returned to his family without any death certificate.
4. The Applicant further avers that neither the Government nor the Public Prosecutor made a statement on the circumstances that led to the death of her father and other persons who were "shot" during the events. She also states that no criminal proceedings have been instituted against the perpetrators of the shootings.

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<sup>1</sup> *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order (provisional measures), 5 May 2020, §§ 4 and 5 and *Corrigendum* of 29 July 2020.

5. According to the Applicant, the Respondent State instead carried out arrests and instituted legal proceedings against protesters and leaders of opposition political parties.

## **B. Violations alleged**

6. The Applicant alleges violation of the following rights:
  - The right to freedom of assembly and demonstration, protected by Article 11 of the Charter and Article 21 of the International Covenant on Civil and Political Rights (ICCPR);
  - The right to life, protected by Articles 4 of the Charter and 6 of the ICCPR;
  - The right to respect for the principle of non-retroactivity of criminal law, protected by Article 7(2) of the Charter.

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

7. The Application was filed at the Registry on 18 October 2019. It was served on the Respondent State on 12 December 2019 for its response within sixty (60) days of receipt.
8. The parties filed their written pleadings within the timelines stipulated by the Court.
9. Pleadings were closed on 5 June 2023 and the Parties were duly informed.

## **IV. PRAYERS OF THE PARTIES**

10. The Applicant prays the Court to:

- i. Declare that it has jurisdiction;
- ii. Declare the Application admissible;
- iii. Find that the Government of Benin did not protect its citizens during the demonstrations before and after the 28 April 2019 elections;
- iv. Declare that Assouma MAMA SEÏDOU was the subject of extrajudicial execution by the Beninese army and that the Government of Benin is liable for his murder;
- v. Find that the State of Benin violated Assouma MAMA SEÏDOU's right to demonstrate;
- vi. Find that the crime of unarmed assembly is a measure restricting the freedom of peaceful public assembly and demonstration;
- vii. Order the Respondent State to stop deploying the army during public demonstrations in peaceful gatherings;
- viii. Order the State of Benin to institute serious and necessary proceedings against its employees, members of the armed forces involved in the murder of Assouma MAMA SEÏDOU;
- ix. Order the State of Benin to repeal the Law on the Penal Code with regard to the offence of unarmed assembly;
- x. Order the State of Benin to release all those arrested and imprisoned during and in connection with the events relating to the 28 April 2019;
- xi. Order the State of Benin to report to the Court within such period as the Court may determine;
- xii. Order the Republic of Benin to pay the sum of Two Hundred Million (200,000,000) CFA Francs as damages;
- xiii. Order the Republic of Benin to pay costs.

11. The Respondent State prays the Court to:

- i. Note that the matter was referred to the Court at the initiative of Samiratou MAMA SEÏDOU;
- ii. Note that she has not been designated by the family or by court order to represent the family;
- iii. Find that she does not have the power to act before the Court;
- iv. Note that at the time of considering the Application, local remedies had not been exhausted before Ms Samiratou MAMA SEÏDOU referred the matter to the Court;

- v. Find that local remedies exist, are available and effective;
- vi. Find that the Applicant did not exhaust local remedies;
- vii. Accordingly, declare Ms Samiratou MAMA SEÏDOU's Application inadmissible;
- viii. Find that the crowd was armed;
- ix. Find that public security forces were deployed to trouble spots to stop the violence and restore order;
- x. Find that the security forces acted in accordance with public order laws;
- xi. Find that they did not commit any fault;
- xii. Consequently, the State of Benin cannot be held accountable for any fault;
- xiii. Find that the death of the Applicant's father may also have been caused by crowd movements, bladed weapons and shots fired by hunters;
- xiv. Find that there is no basis to impute the death of Mr Mama Seidou to the security forces;
- xv. Find that the evidence adduced by the Applicant is insufficient;
- xvi. Accordingly, declare the Applicant's claims as unfounded;
- xvii. Find that the Applicant's participation in the demonstrations was illegal;
- xviii. Find that the deceased was in an illegitimate situation;
- xix. Find that he was at fault;
- xx. Find that the fault of the deceased exonerates the State from any liability;
- xxi. Find that the amount claimed by the Applicant is not based on any criteria;
- xxii. Find that this amount is imaginary;
- xxiii. Accordingly, dismiss the Applicant's requests.

## **V. JURISDICTION**

12. Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.
13. Furthermore, Rule 49(1) of the Rules provides that “the Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and the [...] Rules”.<sup>2</sup>
14. Based on the above-mentioned provisions, the Court must, in each case, conduct a preliminary examination of its jurisdiction and rule on objections thereto, if any.
15. The Court observes that no objection has been raised to its jurisdiction. Nevertheless, in line with Rule 49(1) of the Rules, the Court must ascertain that all aspects of its jurisdiction are fulfilled.
16. Having found nothing on record to indicate that it lacks jurisdiction, the Court finds that it has:
  - i. Material jurisdiction, insofar as the Applicant alleges human rights violation protected by the Charter and the ICCPR,<sup>3</sup> human rights instruments to which the Respondent State is a party;
  - ii. Personal jurisdiction, insofar as the Respondent State is a party to the Protocol and has deposited the Declaration. The Court recalls, as stated in paragraph 2 of the present Judgment, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of the Declaration. In this regard, the Court reiterates its jurisprudence according to which the withdrawal of the Declaration by the Respondent State has no retroactive effect and has no bearing on new or pending cases brought before it prior to the entry into force thereof, that is, twelve (12) months after the deposit of the instrument relating thereto, in this case on 26 March 2021. The present Application, which was filed before the Respondent State withdrew its Declaration, is therefore not

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<sup>2</sup>Article 39(1) of the Rules of Court of 2 June 2010.

<sup>3</sup>The Respondent State became a party to the ICCPR on 23 March 1976.

affected;<sup>4</sup>

- iii. Temporal jurisdiction, insofar as the alleged violations occurred after the Respondent State became a party to the Protocol;
- iv. Territorial jurisdiction, insofar as the facts of the case took place in the territory of the Respondent State.

17. In the light of the foregoing, the Court finds that it has jurisdiction to consider the present Application.

## **VI. ADMISSIBILITY**

18. The Court notes that the Respondent State raises a preliminary objection to the admissibility of the Application. The Court will first examine this objection before examining, if necessary, the admissibility requirements provided for in the Charter and the Rules.

### **A. Preliminary objection to admissibility**

19. The Respondent State raises a preliminary objection to admissibility of the Application based on the Applicant's lack of standing, arguing that the minutes of the family meeting signed by the victim's siblings show that Lahoui SEÏDOU was designated as custodian of the deceased's children, all minors at the time of the facts. On 1 September 2019, Lahoui SEÏDOU gave a power of attorney to Mr Renaud AGBODJO to seize the Court.

20. It avers that the Applicant seized the Court in her name, on her behalf and on behalf of her father's other children. It states that by acting as such, the Applicant is acting as the representative of the family of the deceased whereas she has not been given any power of attorney to act in that capacity.

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<sup>4</sup> See paragraph 2 of this Judgment.

21. It argues that in any case, the minutes of the family meeting is illegal for lack of approval by the courts, so that the power of attorney itself has no effect.
22. In reply, the Applicant contends that the objection should be overruled, arguing that the only requirements for an individual or an NGO to file an application with the Court against a State are that the said State should have ratified the Charter and the Protocol and deposited the Declaration, and the Applicant is not required to demonstrate any personal interest.
23. She further avers that she does not need a power of attorney to act on behalf of the victim's estate. To this end, she produced a copy of her birth certificate as well as the minutes of the family meeting in which the names of her siblings appear which, according to her, prove their kinship to the victim.
24. The Applicant asserts that the Court is not bound by the restrictive domestic laws governing the validity of evidence and may determine that the evidence required under domestic law is not necessarily required before the Court.

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25. The Court notes that under 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".
26. The Court notes that these provisions do not require the Applicant to have any other capacity whatsoever in order to act before the Court. The Court has previously held that the only requirement is that the Respondent State, in addition to being a party to the Charter and Protocol, must have

deposited the Declaration entitling individuals and NGOs to file applications with the Court, which is the case in the present application<sup>5</sup>.

27. The Court emphasises that in the instant case, the Respondent State is a party to the Charter and the Protocol. Moreover, it had deposited the Declaration at the time of filing the Application. Accordingly, the Applicant has validly seized the Court.
28. The Court further observes that it is not challenged that the Applicant is the daughter of the victim. The Court considers that such relationship is a ground for her standing before this Court.
29. Consequently, the Court dismisses the preliminary objection raised.

#### **B. Admissibility requirements provided by the Charter and the Rules**

30. Article 6(2) of the Protocol provides that “[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
31. In accordance with Rule 50(1) of the Rules,<sup>6</sup> “[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter and Article 6(2) of the Protocol and these Rules”.
32. Rule 50(2) of the Rules, which in substance restates Article 56 of the Charter, provides as follows:

Applications before the Court shall comply with all of the following conditions:

- (a) Indicate their authors even if the latter request anonymity;
- (b) Are compatible with the Constitutive Act of the African Union and with the Charter;

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<sup>5</sup> *XYZ v. Republic of Benin* (merits and reparations) (27 November 2020) 4 AfCLR 83, §§ 54-55

<sup>6</sup> Rule 40 of the Rules of 2 June 2010.

- (c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the African Union;
- (d) Are not based exclusively on news disseminated through the mass media,
- (e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- (f) Are submitted within a reasonable time from the date the local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which is shall be seized with the matter;
- (g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

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33. The Respondent State raises an objection based on non-exhaustion of local remedies on which the Court will rule before examining other admissibility requirements, if necessary.

**i. Objection based on non-exhaustion of local remedies**

34. The Respondent State asserts that the requirement of exhaustion of local remedies aims to prevent international human rights courts from acting as trial courts but, rather, contribute to strengthening complementarity and the principle of subsidiarity.

35. The Respondent State further alleges that its laws are unique insofar as they entrust the Constitutional Court with jurisdiction to adjudicate matters of human rights violations, as set out in Article 117 of Law No. 2019-40 of 7 November 2019 amending Law No. 90-32 of 11 December 1990 on the Constitution.

36. In the instant case, it affirms that it could not be held responsible for any human rights violation since the Applicant has failed to avail herself of the available domestic judicial mechanisms to establish and redress the violations she alleges.
37. Accordingly, the Respondent State prays the Court to declare the Application inadmissible.
38. For her part, the Applicant submits that she did not pursue local remedies because, firstly, they were inaccessible due to the threats and intimidation to which the victims' relatives were subjected and, secondly, because they were ineffective insofar as the Respondent State did not open any investigation into the circumstances that led to her father's death. She argues that neither victims nor their families can be expected to take responsibility for the exhaustion of local remedies since it is the duty of the State to investigate crimes and bring perpetrators to justice.

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39. The Court notes that, pursuant to Rule 50(2)(e) of the Rules and Article 56(5) of the Charter, for an application to be admissible, local remedies must have been exhausted if they are available, unless it is clear that the procedure has been unduly prolonged.<sup>7</sup>
40. The Court emphasises that the local remedies to be exhausted are judicial in nature. They must be available, that is, they must be accessible to the Applicant without impediment, and effective in the sense that they are "found satisfactory by the complainant or are capable of redressing the complaint".<sup>8</sup>

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<sup>7</sup> *Ghaby Kodeih and Nabih Kodeih v. Republic of Benin*, ACtHPR, Application No. 008/2020, Judgment of 23 June 2022 (jurisdiction and admissibility), § 49; *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 032/2020, Judgment of 22 September 2022 (jurisdiction and admissibility), § 38.

<sup>8</sup> *The beneficiaries of the late Norbert Zongo, Aboulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso*, Judgment (merits) (5 December 2014) 1 AfCLR 219, § 68; *Ibid.* Konaté v. Burkina Faso (merits) §108.

41. The Court observes that it is not sufficient for an Applicant to simply question the availability or effectiveness of local remedies. Rather, an Applicant should take all necessary steps to exhaust or, at least, to attempt to exhaust local remedies.<sup>9</sup>
42. The Court notes that, under the laws of the Respondent State, the Applicant is entitled to bring a civil action before the judicial authorities or a criminal action before the courts<sup>10</sup> and may, alternatively, pursue two remedies in relation to the “murder” of her father.
43. Firstly, she could, pursuant to Article 38 of the Code of Criminal Procedure (CCP),<sup>11</sup> lodge a complaint with the relevant Public Prosecutor with territorial jurisdiction, who will determine what further action to take. Secondly, under Article 90 of the Code of Criminal Procedure,<sup>12</sup> she could file a civil suit before the president of the court with territorial jurisdiction, who would immediately refer the matter to an Investigating Judge.
44. The Court underscores that, in any event, if the Applicant considers that fundamental rights have been violated, she could have seized the Constitutional Court of the Respondent State to raise the grievances that she raises before this Court. Indeed, it emerges from Articles 114<sup>13</sup> and 120<sup>14</sup> of the Constitution that the Constitutional Court “shall guarantee the

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<sup>9</sup>*Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 032/2020, Judgment of 22 September 2022 (jurisdiction and admissibility) §40.

<sup>10</sup> Article 2 of the Code of Criminal Procedure of Benin provides as follows: “Civil action for compensation for damage caused by a crime, misdemeanour or contravention shall be open to all those who have personally suffered damage directly caused by the offence”. Article 4(3) of the CCP provides that: “Civil action shall be admissible for all types of damages, be they material, bodily or moral, relating to the acts which are the subject of the proceedings.”

<sup>11</sup> Article 38 of the Code of Criminal Procedure provides that: “The Public Prosecutor shall receive complaints and denunciations and decide on the course of action to be taken”.

<sup>12</sup> Article 90 of the Code of Criminal Procedure provides that: “Any person who claims to have been wronged by a felony or misdemeanour may lodge a civil action with the president of the court, who shall immediately refer the matter to the investigating judge.”

<sup>13</sup> “The Constitutional Court shall be the highest jurisdiction of the State in constitutional matters. It shall be the judge of the constitutionality of the law and shall guarantee the fundamental human rights and public liberties. It shall be the regulatory body for the functioning of institutions and the activity of public authorities.”

<sup>14</sup> “The Constitutional Court must rule within a period of fifteen days after it has been seized of a legal instrument or of a complaint of the violation of human rights and of public liberties.”

fundamental rights of the human person” and may, in this regard, be seized by any person “of a complaint relating to violation of human rights and public liberties”.

45. The Court has consistently held that this remedy before the Constitutional Court of the Respondent State is available and effective, insofar as Beninese citizens can pursue it without hindrance, and that the decisions of the Constitutional Court “*are binding on the public authorities and on all civil, military and judicial authorities*”.<sup>15</sup>
46. The Court notes that the Applicant acknowledges that she did not pursue any local remedies. She justifies her failure to do so, on the one hand, by their inaccessibility due to the threats and intimidation against her and, on the other, by their ineffectiveness since the Respondent State did not initiate any investigations or proceedings against the perpetrators of the deadly shootings.
47. Regarding the claim that local remedies were inaccessible, the Court notes that the Applicant has not adduced any evidence of threats or intimidation targeting her specifically and which prevented her from pursuing local remedies. The Court also notes that nothing prevented the Applicant from hiring a lawyer to pursue the available remedies as she has done before this Court.
48. Regarding the argument that local remedies were ineffective owing to the Respondent State’s failure to prosecute the perpetrators of the shootings, the Court notes that the Applicant is simply casting aspersions on the effectiveness of the remedy and adduces no evidence to substantiate her

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<sup>15</sup> *Laurent Mentegnon and others v. Republic of Benin*, ACtHPR, Application No. 031/2018, Judgment (jurisdiction and admissibility), 24 March 2022, § 63.

claims. In this regard, the Court has held that “general assertions are not sufficient. More concrete evidence is needed.”<sup>16</sup>

49. The Court therefore considers that the Applicant’s arguments justifying the failure to exhaust local remedies do not hold and that she should have initiated the remedies before domestic courts before filing the Application before it. The Court therefore finds that the Applicant did not exhaust the available local remedies.

50. Accordingly, the Court finds that the Application does not meet the requirement of Rule 50(2)(e) of the Rules.

## ii. Other admissibility requirements

51. Having found that the Application does not meet the requirement of Rule 50(2)(e) of the Rules and, in view of the cumulative nature of admissibility requirements,<sup>17</sup> the Court does not need to rule on the admissibility requirements set out in paragraphs 1, 2, 3, 4, 6 and 7 of Article 56 of the Charter as restated in Rule 50(2) (a)(b)(c)(d)(f) and (g) of the Rules.<sup>18</sup>

52. Accordingly, the Court finds the Application inadmissible.

## VII. COSTS

53. Each Party prays that the other be ordered to bear the costs.

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<sup>16</sup> *Fidèle Mulindahabi v. Republic of Rwanda*, Judgment (jurisdiction and admissibility) (4 July 2019), 3 AfCLR 367, §15; *Kennedy Gihana & Others v. Republic of Rwanda*, (merits and reparations) (28 November 2019) 3 AfCLR 655, §120; *Alex Thomas v. Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 140.

<sup>17</sup> *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018), 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS v. Republic of Mali*, ACtHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39.

<sup>18</sup> *ibid.*

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54. According to Rule 32(2) of the Rules,<sup>19</sup> “[u]nless otherwise decided by the Court, each party shall bear its own costs.”
55. The Court finds no reason to depart from this principle in the instant case.
56. Accordingly, the Court orders the Applicant to bear her own costs.

## VIII. OPERATIVE PART

57. For these reasons

THE COURT

*Unanimously,*

*On jurisdiction*

- i. *Declares* that it has jurisdiction;

*On admissibility*

- ii. *Upholds* the Respondent State’s objection to admissibility of the Application based on non-exhaustion of local remedies.
- iii. *Declares* the Application inadmissible.

*On costs*

- iv. *Orders* each Party to bear its own costs.

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<sup>19</sup> Rule 30(2) of the Rules of 2 June 2010.

