


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER

OF

BOUKARY WALISS

V.

BURKINA FASO

REPUBLIC OF GUINEA BISSAU

REPUBLIC OF MALI

REPUBLIC OF NIGER

APPLICATION NO. 001/2025

RULING

(PROVISIONAL MEASURES)

26 JUNE 2025



The Court, composed of: Chafika BENSOUOLA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA - 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 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Modibo SACKO, President of the Court and a national of Mali, did not hear the Application.

In the Matter of:

Boukary WALISS

Self-represented.

Versus

BURKINA FASO

Represented by Mr. Karfa GNANOU, Judicial officer of the Treasury.

THE REPUBLIC OF GUINEA-BISSAU

Represented by:

- i. Dr. Bacari Biai, Attorney General,
- ii. Juscelino de Gaulle Cunha Pereira, Deputy Attorney General,
- iii. Dr Alexandrina da Silva, Deputy Attorney General,
- iv. Dr Quintino Inquebi, Deputy Attorney General,
- v. Dr Júlio António Cá, Deputy Attorney General.

REPUBLIC OF MALI

Unrepresented

REPUBLIC OF NIGER

Represented by:

- i) Mr Hassane DJIBO, Director General of the State Judicial Agency,
- ii) Mr Oumarou MAINASSARA, Advocate, Bar of Niger.

After deliberation,

Issues this Ruling:

I. THE PARTIES

1. Mr. Boukary Waliss, (hereinafter referred to as “the Applicant”) is a national of Benin and an economist by profession. He alleges violation by the Respondent States of his human rights insofar as the Conference of Heads of State and Government (hereinafter referred to as “the Conference”) of the West African Economic and Monetary Union (hereinafter referred to as “WAEMU”) recognised the election of Mr Patrice Talon as President of the Republic of Benin and appointed him as Chairperson of the said Conference.
2. The Application is filed against Burkina Faso, the Republic of Guinea-Bissau, the Republic of Mali and the Republic of Niger (hereinafter jointly referred to as “the Respondent States”), which became Parties to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986, 21 October 1986, 21 October 1986 and 21 July 1987 respectively. The Respondent States became Parties to the

Protocol on: 23 February 1999, 2 November 2021, 20 June 2000 and 26 June 2004 respectively. They also deposited, on: 28 July 1998, 2 November 2021, 19 February 2010 and 7 April 2022, the Declaration provided for in Article 34(6) of the Protocol, by virtue of which they accept the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Declaration").

II. SUBJECT OF THE APPLICATION

3. It emerges from the Application that on 25 March 2022, Mr Patrice Talon, President of the Republic of Benin, was appointed Chairperson of the WAEMU Conference, of which the Republic of Benin and the Respondent States are members.
4. The Applicant submits that the Respondent States should not have recognised the election of Mr Patrice Talon as President of the Republic of Benin, let alone appoint him the Chairperson of the WAEMU Conference , in view of the numerous human rights violations that took place before and after the said election.
5. According to the Applicant, the Respondent States through their actions violated Article 3 of the Revised WAEMU Treaty under which they are required to respect fundamental human rights, in particular those set out in the Charter and the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR").

III. ALLEGED VIOLATIONS

6. The Applicant alleges violation of the following rights:

- i. The obligation to recognise the rights, duties and freedoms set out in the Charter and to undertake to adopt legislative or other measures to implement them, as provided for in Article 1 of the said Charter.
- ii. The right to non-discrimination, protected by Article 2 of the Charter;
- iii. The right of peoples to the assistance of State Parties to the Charter in their struggle for liberation from foreign domination, whether political, economic or cultural, protected by Article 20 of the Charter;
- iv. The duty, separately or collectively, to ensure the exercise of the right to economic development, provided for in Article 22 of the Charter.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 7. The Application was filed together with a request for provisional measures at the Registry on 4 February 2025. The Application and request for provisional measures were served on the Republic of Niger on 7 May 2025, and on Burkina Faso, the Republic of Guinea-Bissau and the Republic of Mali on 8 May 2025 for their Responses respectively within 90 days and 15 days of receipt.
- 8. On 6 May 2025, the Registry transmitted the Application and the request for provisional measures to the Chairperson of the African Union Commission and, through him, the Executive Council of the Union and all the other State Parties to the Protocol.
- 9. On 22 May 2025 and 6 June 2025, the Republic of Niger and Burkina Faso respectively filed their Responses to the request for provisional measures. The Republic of Guinea-Bissau and the Republic of Mali did not file their Responses.

V. **PRIMA FACIE JURISDICTION**

10. The Republic of Niger raises an objection to the Court's jurisdiction, contending that the Court lacks jurisdiction to entertain the present request for provisional measures. In this regard, it argues that, according to a general principle of law, the special rule derogates from the general rule, which means that when two legal frameworks can be applied to a situation, one specific and the other general, it is the specific framework that must be applied.
11. It explains that in the present case, since the proceedings against WAEMU member countries concern the validity or otherwise of a national election, or the recognition of the legitimacy or otherwise of a regime, the Court must relinquish its jurisdiction to hear this case to the WAEMU, since the latter has a body empowered to hear complaints against these countries, in this case, the WAEMU Court of Justice.
12. For its part, Burkina Faso argues that the measures sought by the Applicant do not relate to questions of interpretation and application of the Charter, the Protocol or any other human rights instrument, but relate to the sovereign diplomatic positions of States in their international diplomatic relations, particularly within WAEMU.
13. Burkina Faso submits that, as none of the provisional measures requested fall, *prima facie*, within the scope of Article 3 of the Protocol, the Court must declare that it has no jurisdiction to entertain the said requests.

14. Article 3(1) of the Protocol provides as follows:

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.

15. Under of Rule 49(1) of its Rules, “the Court shall conduct preliminary examination of its jurisdiction.” However, with regard to provisional measures, the Court need not ensure that it has jurisdiction over the merits of the case, but only that it has *prima facie* jurisdiction.¹
16. In the present case, the rights whose violation the Applicant alleges are protected by the Charter, a human rights instrument to which the Respondent States are Parties. The Court further recalls that the Respondent States have ratified the Protocol and deposited the Declaration, as indicated in paragraph 2 of this Ruling.
17. Consequently, the Court dismisses the objection to jurisdiction and finds that it has *prima facie* jurisdiction to hear the present request for provisional measures.
18. The Court emphasizes that, in matters of provisional measures, consideration of the request is subject only to the preliminary determination of its *prima facie* jurisdiction, which, in this case, has been done.²
19. Consequently, the Court notes that there is no need to examine the objection to the admissibility of the Application raised by the Republic of Niger and Burkina Faso.

VI. PROVISIONAL MEASURES REQUESTED

20. The Applicant prays the Court to order the Respondent State to:

¹ *Komi Koutche v. Republic of Benin* (provisional measures) (2 December 2019) 3 AfCLR 725, § 14.

² *Sébastien Germain Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § 30.

- i. ensure that Benin complies with the decisions of this Court in accordance with Article 3 of the revised WAEMU Treaty;
 - ii. Withhold recognition of any Beninese leader who emerges from elections organised in violation of court rulings from international human rights courts, the Charter and the UDHR, and prevent same from using WAEMU to put Benin into debt.
- 21. In support of the first measure sought, the Applicant avers that there is urgency and extreme gravity insofar as there is a strong likelihood that in the 2026 general elections in Benin, millions of Beninese will be prevented from enjoying their right protected by Article 13(1) of the Charter by laws that are contrary to their fundamental rights and to Benin's international commitments. He claims that this situation is likely to cause electoral disturbances and jeopardise the right to life.
- 22. Furthermore, he argues that this situation would be detrimental to Benin citizens insofar as there will be no re-run of the said elections in the immediate future, and that no effective remedy would be available after this type of "rigged" election.
- 23. With regard to the second measure requested, the Applicant avers that there is urgency as there is a real risk that the regime in power in Benin will continue in power after the 2026 elections and continue to run the country into debt. It is his case that this situation is extremely serious because the Beninese people are unable to choose the government programme that is best tailored to their needs owing to limited political choices. He also submits that only the current regime and a single opposition party are allowed to present candidates in the 2026 presidential election.
- 24. The Applicant further argues that Benin's borrowing policy is causing irreparable harm to its citizens, who are unfairly and heavily taxed to repay this debt, without having any effective remedy to seek redress.

25. The Republic of Niger prays the Court to dismiss the Applicant's requests on the grounds that the conditions for granting provisional measures are not met.
26. In this respect, the Republic of Niger points out that the Applicant does not provide any evidence of the facts underpinning his claim of the extreme seriousness of the harm alleged.
27. It further submits that urgency must be characterised by circumstances of such a nature as to require issuing a decision to avoid irreparable harm or imminent risk of harm. According to the Republic of Niger, this is not the case here, insofar as urgency has neither been characterised nor demonstrated, as the Applicant provides no proof that President Patrice Talon intends to run for a third term of office.
28. Lastly, the Republic of Niger submits that the harm alleged by the Applicant is neither certain nor real nor irreparable.
29. For its part, Burkina Faso, submits that all of the Applicant's allegations concerning Patrice Talon clinging to power, the Republic of Benin's continuing indebtedness and the holding of elections in 2026 are mere speculation.
30. Burkina Faso further submits that the Applicant does not indicate any likelihood, let alone reasonable likelihood, of harm to his personal situation.
31. Accordingly, Burkina Faso considers that the provisional measures sought have no basis in law and do not in any way comply with the requirements under Rule 59(1) of the Rules and Article 27(2) of the Protocol. It concludes that the request for provisional measures should be dismissed.

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32. The Republic of Guinea-Bissau and the Republic of Mali did not submit.

33. The Court notes that Article 27(2) of the Protocol provides that “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”.
34. In the light of the above, the Court may only order provisional measures in cases of extreme gravity or urgency, in order to prevent irreparable harm to individuals.
35. The Court recalls that urgency, which is consubstantial with extreme gravity, means a “real and imminent risk will be caused before it renders its final decision”.³ The risk in question must be real, which precludes supposed or hypothetical risk. It is a serious risk that requires immediate remedial action.⁴
36. With respect to irreparable harm, the Court considers that there must be a “reasonable likelihood of occurrence” having regard to the context and the Applicant’s personal situation.⁵
37. In view of the foregoing, the Court can only order provisional measures if the requirements of extreme gravity or urgency and the prevention of irreparable harm to persons are met.

³ *Sébastien Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § 61.

⁴ *Ibid*, § 62.

⁵ *Ibid*, § 63.

38. The Court notes, however, that it is only required to ascertain the existence of these conditions if it is established that the measures sought do not prejudice the merits of the Application.⁶
39. The Court considers that a request for provisional measures prejudices the merits of an Application where the measures sought in the request are similar to those sought in the Application, where it seeks to achieve the same result or, in any event, where it deals with matters on which the Court will necessarily rule when examining the merits of the Application.⁷
40. In the present case, the Court notes that in his request for provisional measures, the Applicant seeks, among others, an order “compelling the Respondent States to scrupulously ensure that Benin complies with the decisions of the African Court on Human and Peoples’ Rights that it has not yet implemented” and “note that the current leaders of Benin recognised by the WAEMU are plunging Benin into massive debt and that the Beninese people are suffering from this indebtedness which may be a problem for future generations”.
41. The Court recalls that the Applicant seeks, by way of provisional measures, an order compelling the Respondent States to “ensure that Benin complies with the decisions of this Court” and “and withhold recognition of any Beninese leader who emerges from elections organised in violation of judicial decisions from international human rights courts, the Charter and the UDHR, and that it may not use WAEMU to indebt Benin”.
42. The Court observes that the provisional measures requested are identical to the Application on the merits referred to above and concern issues on which it will have to rule when it eventually examines the merits of the case.

⁶ *Elie Sandwidi and another v. Burkina Faso and 3 others* (provisional measures) (25 September 2020) 4 AfCLR 203, § 65.

⁷ *Ibid*, § 66; *Jean de Dieu Ngajigimana v. United Republic of Tanzania* (provisional measures) (26 September 2019) 3 AfCLR 522, § 25.

43. The Court therefore finds that it will necessarily prejudice the merits of the Application by examining the provisional measures sought in the present case.⁸ Consequently, the Court dismisses the request for provisional measures.

44. For the avoidance of doubt, the Court recalls that this ruling is provisional and does not in any way prejudice its findings on the Court's jurisdiction, admissibility and the merits of the Application.

VII. OPERATIVE PART

45. For these reasons,

THE COURT

Unanimously,

- *Dismisses* the request for provisional measures.

Signed:

Chafika BENSAOULA, Vice President;



and Robert ENO, Registrar.



⁸ *Mohamed Ben Mohamed Taher Zayd v. Tunisian Republic*, AfCHPR, Application No. 005/2022, Order Ruling of 16 December 2022 (provisional measures), § 35; *Hasna Ben Slimane v. Tunisian Republic*, AfCHPR, Application No. 007/2024, Ruling of 3 October 2024 (provisional measures), §§ 40 and 55; *Romarc Jesuskpego Zinsou v. Republic of Benin* (provisional measures) (10 September 2021) 5 AfCLR 332, § 26; *Sandwidi and another v. Burkina Faso and 3 others*, *supra*, §§ 69-70.

Done at Arusha, this Twenty-Sixth day of June in the year Two Thousand and Twenty-five, in English, French and Portuguese, the French and Portuguese versions being authoritative.

