

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

HOUNGUE ERIC NOUDEHOUEYOU

v.

REPUBLIC OF BENIN

APPLICATION No. 003/2020

JUDGMENT

4 DECEMBER 2020



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The Court composed of: Sylvain ORE, President; Ben KIOKO, Vice - President; Rafaâ BEN ACHOUR, Angelo V. MATUSSE, Suzanne MENGUE, M-Therèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD - Judges; and Robert ENO, Registrar.

In the Matter of

HOUNGUE Éric NOUDEHOUEYOU

Represented by:

- i) *Société Civile Professionnelle d'Avocats* (SCPA) Robert DOSSOU, Advocate of the Benin Bar;
- ii) Barrister Laurent BOGNON, Advocate of the Benin Bar.

Versus

REPUBLIC OF BENIN

Represented by

Mr Iréné ACOMBLESSI, Judicial Agent of the Treasury

after deliberation,

renders the following Judgment:

I. THE PARTIES

1. Mr Houngue Eric Noudehouenou (hereinafter referred to as “the Applicant”) is a national of Benin. The Applicant challenges Law No. 2019-40 of 7 November 2019 (hereinafter referred to as “the Revised Constitution”) revising the Constitution of Benin of 11 December 1990 (hereinafter referred to as “the 1990 Constitution”) and Law No. 2019-43 of 15 November 2019 on the Electoral Code (hereinafter referred to as “the Electoral Code”).

2. The Application is filed against the Republic of Benin (hereinafter referred to as “the Respondent State”), which became 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 of Human and Peoples’ Rights on 22 August 2014. On 8 February 2016, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive cases from individuals and Non-governmental organisations. However, on 25 March 2020, the Respondent State deposited with the African Union Commission, an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases and that it also has no effect on new cases filed before the withdrawal comes into effect on 26 March 2021, that is, one year after its filing.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. In his Application, the Applicant alleges that as a result of the effect of Law No. 2018-31 of 3 September 2018 on Electoral Code, which was declared as being in conformity with the Constitution by Constitutional Court decision DCC 18-199 of 2 October 2018, only candidates of two political parties close to the government were able to run for election and be elected in the legislative elections of 28 April 2019.
4. The Applicant submits that the National Assembly that emerged from the said elections promulgated, in secret, without national consensus, the Revised Constitution and the Electoral Code.
5. The Applicant further submits that Constitutional Court decisions DCC 19-504 of 6 November 2019 and DCC 19-525 of 14 November 2019, respectively, ruled that

¹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 585 §69; *Houngue Eric Noudehouenou v. Republic of Benin*, ACtPHR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4- 5 and *Corrigendum* of 29 July 2020.

the said laws are compliant with the Constitution, despite the fact that the laws infringe the Applicant's fundamental rights guaranteed by international human rights instruments ratified by the Respondent State.

B. Alleged violations

6. The Applicant alleges the violation of:

- i. The right to participate freely in the government of his country, as provided under Article 13(1) of the Charter
- ii. The right to freedom of association, as provided under Article 13 of the Charter and Article 20 of the Universal Declaration of Human Rights (UDHR);
- iii. The right to equal protection, as provided under Article 3 of the Charter, Article 7 of the UDHR and Article 26 of the International Covenant on Civil and Political Rights (ICCPR);
- iv. The right to an effective remedy, as provided under Article 13 of the Charter, Article 2(3) of the ICCPR, Article 7(1) of the Charter and Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR);
- v. The right to freedom of expression, as provided under Articles 4 and 6 of African Charter on Democracy, Election and Good Governance (ACDEG), Articles 25(b) and 19 of the ICCPR and Articles 19 and 21(3) of UDHR;
- vi. The right to non-discrimination guaranteed in Article 21 of UDHR, Article 13 of the Charter and Articles 2, 25 and 26 of the ICCPR.
- vii. The principle of amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change, as provided under Article 23(5) of the ACDEG.
- viii. The right to be presumed innocent, as provided under Article 11 of the UDHR
- ix. The right to peace, as provided under Article 23(1) of the Charter
- x. The right to free practice of religion, as provided under Article 8 of the Charter and Article 18 of the ICCPR.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. On 21 January 2020, the Application was filed together with a request for provisional measures. The Application and the request for provisional measures were served on the Respondent State on 20 February 2020.
8. On 5 May 2020, the Court issued an Order for provisional measures, whose operative part reads:
 - i. *Orders* the Respondent State to take all necessary measures to effectively remove any administrative, judicial and political obstacles to the Applicant's candidacy in the forthcoming municipal, district, town or village elections.
 - ii. *Requests* the Respondent State to report to the Court within thirty (30) days of receipt of the ruling, the measures taken to implement the order.
9. Following another Request for provisional measures dated 25 August 2020, the Court issued, on 25 September 2020, a second Order for provisional measures whose operative part reads:
 - i. *Orders* the Respondent State to take all necessary measures to effectively remove any administrative, judicial and political obstacles to the Applicant's candidacy in the forthcoming presidential election in 2021.
 - ii. *Orders* the Respondent State to report to the Court within thirty days of receipt of this Ruling, the measures taken to implement the Order.
10. The Parties filed their submissions on the merits within the time limits prescribed by the Court and these were duly exchanged.
11. On 11 September 2020, in response to the request made in the application instituting proceedings for the Court to allow the Applicant to file submissions on the pecuniary reparations at a later stage, the Court informed the Applicant that it decided to consider claims for reparation when examining the merits of Application, and that he should file his submissions on reparation within thirty (30) days of receipt of the notification.
12. The Applicant did not make file the detailed submissions on reparations.
13. On 9 October 2020, the pleadings were closed and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

14. The Applicant prays the Court to:

- i. Find that the Court has jurisdiction and that the Application is admissible;
- ii. Find that the alleged violations of his human rights are well-founded and that the Respondent State has violated the Applicant's human rights;
- iii. Order the Respondent State to take all necessary constitutional, legislative and other measures within one month and before the forthcoming elections to end the violations established and to inform the Court on the measures taken in this regard;
- iv. Order the Respondent State to take all measures to guarantee the right to participate freely and directly, without any political, administrative or judicial obstacles, in the forthcoming presidential, local and legislative elections free of the violations established by the Court and under conditions respecting the principle of the presumption of innocence as well as the right to freedom from persecution;
- v. Order the Respondent State to take all necessary measures to put an end to all the effects of the violations of which it has been found guilty, in accordance with Chapter IX "Reparation for harm Suffered" of United Nations Resolution 60/147 of 16 December 2005;
- vii. In view of the urgency of the substantive issues, grant the Applicant time to subsequently complete the legal analysis on pecuniary and non-pecuniary reparations, which will be determined by the Court;
- ix. Order the Respondent State to pay all costs.

15. The Respondent State prays the Court to:

- i. Find that Benin is a sovereign state that may freely decide on the content of its laws in accordance with its Constitution;
- ii. Find that the Court cannot rule on the conventionality of national laws;
- iii. Find that the Court lacks jurisdiction to examine or annul the Constitution and Electoral Code of Benin;

- iv. Find that the Applicant has no authority to initiate or request amendments to the laws of Benin;
- v. Find that the Applicant does not justify any authority to act on behalf of all Beninese citizens;
- vi. Accordingly, find the Application inadmissible for lack of standing;
- vi. Find that none of the violations of law alleged by the Applicant is founded;
- vii. Declare and rule that the Respondent State has not violated any of the Applicant's human rights;
- ix. Order the Applicant to pay costs.

V. JURISDICTION

16. 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 a dispute as to whether the Court has jurisdiction, the Court shall decide.

17. Furthermore, under Rule 49(1) of the Rules², "[t]he Court shall ascertain its jurisdiction ... in accordance with the Charter, the Protocol and these Rules".

18. It follows from the above provisions that the Court must, in respect of any application, conduct a preliminary assessment of its jurisdiction and rule on the objections raised, if any.

19. The Court notes that in the present case, the Respondent State raises an objection to the material jurisdiction of the Court.

² Formerly, Rule 39(1) of the Rules of 2 June 2010.

A. Objection to material jurisdiction

20. The Respondent State submits that the purpose of the Applicant's complaints is to annul or amend certain provisions of the Revised Constitution and the Electoral Code of Benin.
21. The Respondent State further submits that once the Constitutional Court rules that a provision is in conformity with the Constitution, it cannot be challenged on the basis that it results in human rights violations. The Responded State argues that the African Court cannot scrutinise the conventionality of national laws and therefore lacks jurisdiction to assess national laws conformity in accordance with international conventions.
22. In this regard, the Respondent State avers that since the Constitution is the supreme expression of sovereignty, neither it nor any other law expressing the national will can be amended by a court. Therefore, it argues that the Court lacks jurisdiction to consider the instant Application.
23. The Applicant points out that whenever a domestic law violates its rights protected by international instruments to which the Respondent is a party, the Court has jurisdiction within the meaning of Article 3(1) of the Protocol.
24. Accordingly, the Applicant asserts that the Respondent State's objection should be dismissed.

25. The Court notes that, in accordance with Article 3(1) of the Protocol, its jurisdiction "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."
26. The Court notes that in order for it to have material jurisdiction, it is sufficient that the rights purportedly violated be guaranteed by the Charter or by any other human rights instrument ratified by the State concerned.³ In the instant case, the

³ *Franck David Omary and others v. United Republic of Tanzania*, (admissibility) (28 March 2014) 1 AfCLR 371, § 74; *Peter Chacha v United Republic of Tanzania*, (admissibility) (28 March 2014) 1

Application alleges violations of various rights protected by the Charter, the ICCPR, and ACDEG to which the Respondent State is a party. As regards the ACDEG specifically, the Court recalls its position that this Charter constitutes a human rights instrument within the meaning of Article 3 (1) of the Charter and, therefore, the Court has jurisdiction to examine complaints alleging violations of its provisions.⁴

27. Regarding the claim that the Court cannot adjudicate the conventionality of national laws, the Court states that it follows from the applicable provisions that, it has the power to examine all violations alleged before it, including the conformity with national laws, in the light of the provisions of the Charter and other international instruments ratified by the Respondent State.
28. The Court declares that it has material jurisdiction and therefore dismisses the Respondent State's objection.

B. Other aspects of jurisdiction

29. The Court finds that nothing on the record shows that it lacks jurisdiction with respect to the other aspects of jurisdiction and declares that it has:

- i) Personal jurisdiction, insofar as the Respondent State is a party to the Charter, the Protocol and has deposited with the Commission, the Declaration which allows individuals and non-governmental organisations with observer status to bring cases directly before the Court. In this regard, the Court recalls its earlier position that the Respondent State's withdrawal of its Declaration on 25 March 2020 does not have effect on the instant Application, as the withdrawal was made

AfCLR 413, § 118; *Alex Thomas c. United Republic of Tanzania*, (merits) (20 November 2015) 1 AfCLR 482, § 45. The Respondent State became a party to the International Covenant on Civil and Political Rights (ICCPR) on 12 March 1992, the African Charter on Democracy, Elections and Governance (ACDEG), on 11 July 2012, the A/SP1/12/01 Protocol of the Economic Community of West African States (ECOWAS) on Democracy and Good Governance, Additional Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace Keeping and Security (ECOWAS Protocol on Democracy) on 20 February 2002.

⁴ *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* (2016) 1 AfCLR 668, §§ 48-65.

after the Application was filed before the Court.⁵

- ii) Temporal jurisdiction, insofar as the alleged violations were perpetrated, in relation to the Respondent State, in 2018 and 2019, that is, after the entry into force of the abovementioned instruments.
- iii) Territorial jurisdiction, insofar as the facts of the case and the alleged violations took place in the territory of the Respondent State.

30. Accordingly, the Court has jurisdiction to examine the instant Application.

VI. PRELIMINARY OBJECTION ON ADMISSIBILITY

31. The Respondent State raises a preliminary objection relating to the admissibility of the Application, based on the Applicant's lack of standing before the Court to seek amendment of the Electoral Code and the Constitution of Benin, and to represent Beninese citizens.

32. The Court notes that even if these objections are not grounded in the Protocol and the Rules, the Court is required to examine them.

33. According to the Respondent State, the Applicant is seeking, through his prayers, the Court's intervention for the purpose of amending the laws in contention, whereas the authority to initiate changes in laws belongs exclusively to the President of the Republic and Parliamentarians by virtue of Article 57(1) of the Constitution of Benin. The Respondent State maintains that since the Applicant is neither the President of the Republic nor a Member of Parliament, he has no standing to file such requests.

34. The Respondent State argues that the Applicant acts not only in his own interest but also on behalf of every citizen. The Respondent State further argues that as "*no one shall plead by proxy*," the Applicant cannot act on behalf of other Beninese citizens because he does not have the mandate to do so and cannot assess the interests of all citizens on his own.

⁵ See paragraph 2 above.

35. On his part, the Applicant submits that his prayers rely on the Court's jurisprudence according to which applications concerning electoral rights cannot be examined as if they were individual actions. If there has been a violation, it affects all citizens and the Court's decision benefits everyone.⁶

36. The Applicant maintains that, in any event, the objection raised by the Respondent State lacks legal basis in so far as it is not provided for in the provisions of Article 56 of the Charter, which sets out the conditions for admissibility of an application filed before the Court.

37. The Court notes that under Article 5(3) of the Protocol, "the Court may entitle relevant Non-Governmental Organisations (NGOs) with observer status with the African Commission and individuals to institute cases directly before it..."

38. The Court notes that these provisions do not require individuals or NGOs to demonstrate a personal interest in an Application in order to access the Court. The only prerequisite is that the Respondent State, in addition to being a party to the Charter and the Protocol, should have deposited the Declaration allowing individuals and NGOs to file a case before the Court. It is also in cognisance of the practical difficulties that ordinary African victims of human rights violations face in bringing their complaints before the Court, thus allowing any person to bring applications to the Court without a need to demonstrate victimhood or a direct interest.⁷

39. In the instant Application, the Court observes that the Applicant is challenging the Revised Constitution and the Electoral Code. Considering that these laws pertain to the Constitution and relate, more specifically, to elections, it is evident that the case involves matters of public interest having a direct bearing on the rights of the citizens of the Respondent State, including the Applicant. Accordingly, the Applicant has an interest to file this Application before the Court as the issues

⁶ *Tanganyika Law Society, The Legal and Human rights Centre and Reverend Christopher Mtikila v. Republic of Tanzania*, (merits) (14 June 2013) 1 AfCLR 34.

⁷ African Commission on Human and Peoples Rights, Communications 25/89, 47/90, 56/91, 100/9, *World Trade Organisation Against Torture, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah (WTOAT) v. Zaire*, §. 51.

therein implicate his own rights.

40. The Court wishes to point out that the fact that an application raises matters of general public interest does not prevent individuals from bringing such cases before the Court. Indeed, it is an estimable virtue and duty of a responsible citizen to stand for the preservation of public interest. In any event, as was indicated above, neither the Charter, the Protocol, nor the Rules require an applicant to be a direct victim of human rights violations or demonstrate interest in a matter to institute a case in the Court.

41. Consequently, the Court dismisses the Respondent State's objection to the admissibility of the Application on the basis that the Applicant is acting not only in his behalf but also all other citizens.

VII. ADMISSIBILITY OF THE APPLICATION

42. Article 6 (2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

43. In accordance with Rule 50(1) of the Rules⁸ provides that: "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules."

44. Rule 50 (2) of the Rules⁹, which essentially restates Article 56 of the Charter, provides as follows:

Applications filed 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,
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,

⁸ Formerly Rule 40 of the Rules of Court, 2 June 2010.

⁹ Ibid.

- 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 local remedies were exhausted or from the date the Commission is 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, the Constitutive Act of the African Union or the provisions of the Charter.

45. The Respondent State raises an objection based on non-exhaustion of local remedies.

**A. Condition of admissibility in contention between the parties:
Objection based on non-exhaustion of local remedies**

46. The Respondent State argues that the Applicant had the possibility of filing his complaints at the Constitutional Court, since it has on previous occasions declared specific provisions of laws duly passed by the National Assembly to be inconsistent with human rights,

47. The Respondent State therefore maintains that the Applicant has not fulfilled the condition of exhaustion of local remedies and that his Application should therefore be found inadmissible.

48. The Applicant avers that the Constitutional Court has already declared that the Revised Constitution and the Electoral Code is consistent with the Constitution. Since these decisions are not subject to appeal in accordance with Article 124 (2) of the Constitution, the Applicant submits that appealing against the same laws would be ineffective.

49. The Court notes that pursuant to Article 56(5) of the Charter, whose requirements are restated in Rule 50(2) (e) of the Rules¹⁰, any application filed before it shall fulfil the requirement of exhaustion of local remedies. The rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.¹¹
50. In the instant case, the Court notes that the Application was filed before the Court after the Revised Constitution was adopted following decision DCC 2019-504 of 6 November 2019 of the Constitutional Court of the Respondent State in conformity with Article 114 of the Beninese Constitution¹². The Constitutional Court is the highest jurisdiction of the State in constitutional matters.
51. There is nothing on the record indicating that the Applicant had any other additional ordinary judicial remedy within the judicial system of the Respondent State that he could have pursued to get redresses for his grievances.
52. Consequently, the Court finds that the Applicant has exhausted local remedies and therefore the application complies with Rule 50(2) (e) of the Rules.

B. Other conditions of admissibility

53. The Court notes that the Application's compliance with the conditions set out in subparagraphs (a), (b), (c), (d), (f) and (g) of Rule 50(2) of the Rules are not in contention between the Parties. However, the Court must consider whether these conditions are fulfilled.
- (i) The Court notes that the condition set out in Rule 50(2)(a) has been fulfilled because the Applicant clearly indicated his identity.
 - (ii) The Court further notes that the Application is compatible with the Constitutive Act of the African Union or the Charter insofar as it relates to

¹⁰ Formerly Rule 40(5) of the Rules of 2 June 2010.

¹¹ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

¹² Constitution of 11 December 1990.

alleged violations of human rights enshrined in the Charter and thus fulfils the requirement of Rule 50(2)(b).

- (iii) The Court observes that the Application is not written in disparaging or insulting language, and therefore, fulfils the requirement in Rule 50(2)(c).
- (iv) The Court notes that since the present Application is not based exclusively on news disseminated through the mass media but rather concerns legislative provisions of the Respondent State, it fulfils the condition set out in Rule 50(2)(d).
- (v) The Court further observes that the Application was filed on 21 January 2020 challenging the provisions of the Revised Constitution and the Electoral Code. This means that a period of two (2) months had elapsed between the time the impugned laws were promulgated and when the Application was filed. In accordance with Rule 50(2)(f) of the Rules and its jurisprudence,¹³ the Court considers that the Application was filed within a reasonable time.
- (vi) Lastly, the Court notes that the present case does not concern a case that has already been settled by the Parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter or any legal instrument of the African Union. It therefore fulfils the condition set out in Rule 50(2)(g).

54. In the light of the foregoing, the Court concludes that the Application fulfils all the conditions of admissibility set out in Article 56 of the Charter and Rule 50(2) of the Rules, and accordingly, declares it admissible.

VIII. MERITS

55. The Applicant alleges:

- A. Violation of the principle of national consensus by the adoption of the law

¹³*Christopher Jonas v. United Republic of Tanzania*, (merits) (28 September 2017), 2 AfCLR 101, § 55; *Norbert Zongo and others v. Republic of Burkina Faso*, (preliminary objections) (25 June 2013), 1 AfCLR197, § 121.

revising the constitution;

- B. violation of rights as a result of the constitutional revision, namely:
 - i. The right to participate freely in the management of the public affairs of his country;
 - II. Violation of freedom of association;
 - iii. Violation of the right to equality and non-discrimination;
 - v. Violation of the right to freedom of expression;
 - vi. Violation of the guarantee of democratic transfer of power;
 - vii. Violation of the right to freedom of religion.
- C. Violation of the right to an effective remedy before the Constitutional Court;
- D. Violation of the right to presumption of innocence;
- E. Violation of the right to live in peace in Benin.

A. Alleged violation of the principle of national consensus

56. The Applicant submits that the Revised Constitution was adopted in violation of the principle of national consensus, as provided under Article 10(2) of the ACDEG.

57. The Applicant argues that the revision of the Constitution deprived the citizens of Benin their right to freedom of expression and freedom to vote during the April 2019 legislative elections. The Applicant supports this argument on the bases that independent candidacies were prohibited on the one hand, and, on the other, all other opposition political parties were arbitrarily and illegally excluded by Decision EL 19-001 of 1 February 2019 of the Constitutional Court for failure to produce certificates of conformity with Law No. 2018-23 of 17 September 2018 on the Charter of Political Parties, even though the said certificate is not part of the candidacy documents required by the Electoral Code. Thus, only the Members of the Parliament from the ruling party approved the above-mentioned Revised Constitution.

58. The Applicant accordingly submits that the State violated the principle of national

consensus within the meaning of Articles 10(2), 29, 4, 6 and 15 of the ACDEG and Articles 7, 21, 18, 19 and 20 of the UDHR.

59. The Respondent State maintains that the revision of the Constitution was done following a political dialogue to which all political formations in the country were invited, and the procedure provided for in the Constitution itself was complied with.

60. The Court observes that Article 10(2) of the ACDEG provides that “State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.”

61. The Court notes that prior to the ratification of the ACDEG, the Respondent State had established national consensus, as a principle with constitutional value, through Constitutional Court decision DCC 06 - 74 of 8 July 2006, as follows:

Although, the Constitution provides for the modalities of its own revision, the determination of the Beninese people to create a State based on the rule of law and multi-party democracy, the safeguard of legal security and national cohesion requires that all revisions must take into account the ideals that led to the adoption of the Constitution of 11 December 1990, in particular the national consensus, a principle with constitutional value.

62. Moreover, by its decisions DCC 10 - 049 of 5 April 2010 and DCC 10 - 117 of 8 September 2010, the same Constitutional Court gave a precise definition of the term “consensus”. It stated that:

Consensus, a principle with constitutional value, as affirmed by Decision DCC 06-074 of 08 July 2006 (...) far from signifying unanimity, is first and foremost a process of choice or decision without going through a vote; (...) it makes it possible, on a given issue, to find solution that satisfies a greater number of people through an appropriate channel.

63. The Court holds that the expression 'greater number of people' attributed to 'national consensus' refers to the people but also to the representatives of the people if they truly represent the different forces or sections of society, which is not the case here, since all the parliamentarians belong to the presidential camp.

64. It is not in contention that the Revised Constitution was adopted in line with the summary procedure. A consensual revision would have been possible had it been preceded by consultation with all the stakeholders in the country and people of various opinions in order to reach a national consensus, or were it to be followed, if need be, by a referendum as required by the Constitution.
65. The fact that the Revised Constitution was passed unanimously cannot conceal the need for national consensus driven by the "ideals that prevailed during the adoption of the Constitution of 11 December 1990"¹⁴ and by Article 10(2) of the ACDEG.
66. Consequently, the Court finds that the constitutional revision¹⁵ is inconsistent with the principle of consensus as set out in Article 10(2) of the ACDEG.
67. The Court therefore finds that the Respondent State violated Article 10(2) of the ACDEG.

B. Alleged violation of the right to participate in public affairs, the right to equality, the right to freedom of association, the right to freedom of religion and the right to freedom of expression as a result of the provisions of the Revised Constitution.

68. The Applicant submits that Article 153-1 of the Revised Constitution excludes from participation in public affairs, notably legislative, municipal, village and town elections, any Beninese citizen who does not belong to a political party or is not on the list of a political party, in violation of Article 13(1) of the Charter.
69. The Applicant alleges that the said law violates the right to freedom of association, the right to equality and non-discrimination enshrined in Articles 9(2), 2 and 3 of the Charter.

¹⁴ Judgment DCC 10 - 049 of 5 April 2010 and DCC 10–117 of 8 September 2010 of the Constitutional Court of Benin.

¹⁵ The following articles were deleted: 46 and 47. The following articles have been modified or created: 5, 15, 26, 41, 42, 43, 44, 45, 48, 49, 50, 52, 53, 54, 54-1, 56, 62, 62-1, 62-3, 62-4, 80, 81, 82, 92, 99, 11, 117, 119, 131, 132, 134-1, 134-2, 134-3, 134-4, 134-5, 134-6, 143, 145, 151, 151-1, 153-1, 153-2, 153-3, 157-1, 157-2, 157-3, Title VI(I-1 and I-2) have been modified or created.

70. The Applicant also submits that by requiring Beninese citizens to vote only for candidates chosen and endorsed by political parties, Article 153-1 of the Revised Constitution violates the right to freedom of expression enshrined in Article 19 (2) of the ICCPR.

71. The Applicant further submits that the introduction of sponsorship system through Article 44 of the Revised the Constitution was promulgated by a national assembly composed solely of elected representatives of the party in power. The Applicant states that this Article confers authority of sponsorship only on parliamentarians and mayors, undermines the principle of impartiality and excludes any guarantee of democratic change of government in Benin, as provided for in Article 23(5) of the ACDEG.

72. Lastly, the Applicant argues that by providing as follows: “before taking office, the President of the Republic shall take the following oath: before God, the sacred masts of the ancestors, the Nation and the people of Benin, the sole holder of sovereignty.....,” the new Article 53 of the Revised Constitution violates the right to freedom of religion enshrined in Article 8 of the Charter and Article 18 of the ICCPR.

*

73. The Respondent State argues that the right conferred by Article 13(1) of the Charter must be exercised in accordance with national law and cannot be construed as a violation of human rights. It is up to the persons concerned to rise to the required standards.

74. The Respondent State further argues that there is violation of the right to equality when persons in the same circumstances are treated in different ways. It asserts that, in the instant case, there is no inequality or discrimination because the law did not establish differences in conditions or treatment from one candidate to another.

75. With regard to the alleged violation of freedom of association, the Respondent State asserts that it does not require its citizens to join a political party. What is required, however, is that candidates be registered with a political party before standing for election.

76. Finally, the Respondent State submits that, since the right to vote is expressed by casting a vote or by not voting, there is no violation of the right to freedom of expression because persons who do not meet the requirements are not allowed to stand for election.

77. The Court recalls its finding in paragraph 66 above to the effect that the Constitutional revision violates Article 10(2) of the ACDEG.

78. The Court further holds that it is superfluous to give a detailed ruling on violations that would result from any of the revised articles because the Constitutional revision as a whole violates Article 10(2) of the ACDEG.

79. The Court therefore concludes that the Applicant's prayers that the Court finds violations of the various aforementioned rights due to the constitutional revision, are moot and thus, it does not deem it necessary to deal with them.

C. Alleged violation of the right to an effective remedy for the protection of human rights

80. The Applicant alleges that prior to promulgating the said Revised Constitution, the Respondent State did not provide any modalities for the exercise of remedies against the violation of human rights, as provided under Article 13 of the Charter.

81. The Applicant recalls that referral to the Constitutional Court for purpose of ensuring that the law is in conformity with the Constitution is open only to members of the National Assembly and to the President of the Republic, upon the adoption the said law.

82. The Applicant argues that although Article 122 of the Constitution allows citizens to appeal to the Constitutional Court, this remedy is useless, ineffective and inadequate in the sense that it has the force of *res judicata*; the laws in question having been declared to be consistent with the Constitution before they were promulgated and, therefore, before the citizens became aware of them.

83. The Applicant argues that this remedy is all the more ineffective because Article 124(2) and (3) of the Constitution formally prohibits any appeal against such laws, since it had been declared that the laws are in conformity with the Constitution. Therefore, citizens can only exercise the right of appeal *ex-post* when it has become legally impossible to remedy the situation.

84. Lastly, the Applicant submits that the Respondent State violates the right to an effective, efficient and adequate remedy enshrined in Article 7(1) of the Charter, Article 2(3) of the ICCPR and Articles 8 and 10 of the UDHR.

85. The Respondent State maintains, contrary to the Applicant's assertions that, citizens' right to appeal before the Constitutional Court exists and is effective.

86. Article 7 (1a) of the Charter provides that

Everyone has the right to have their cause heard. This right includes:

a) The right to bring before the competent national courts any act violating the fundamental rights which are recognized and guaranteed by the conventions, laws, regulations and customs in force.

87. The Court notes that while the right to an effective remedy is not explicitly provided for in Article 7 (1) of the Charter, this provision can be interpreted in conjunction with Article 2 (3) (a) of the International ICCPR relating to civil and political rights which provides that:

The Parties States undertake to guarantee that any person whose rights and freedoms recognized in the present ICCPR have been violated will have an effective remedy, even if the violation has been committed by persons acting in the exercise of their functions official.

88. The Court observes that the right to an effective remedy has three (3) components. Firstly, the remedy must be effective, that is, it must not be formal but must be capable of providing redressing for a situation violating fundamental rights. This implies that the person concerned has real access to a court. Secondly, the scope of the provision must relate to laws, conventions, regulations

and customs. Thirdly and lastly, the organ competent to ensure the defence of fundamental rights must be a judicial body.

89. It is important, therefore, to ascertain whether the Respondent State legislation allows citizens to seek redress in court in cases of human rights violations.

90. In this regard, the Court notes that Article 117 of the Constitution of Benin of 11 December 1990 provides as follows:

The Constitutional Court shall rule on the constitutionality of laws and regulatory acts that may infringe fundamental human rights and public freedoms, and violate human rights in general.

91. The Court further observes that in accordance with Article 122 of the Constitution¹⁶ and Articles 20,¹⁷ 22¹⁸ and 24¹⁹ of Law No. 91-009 of 4 March 1991 on Organic Law on the Constitutional Court, the said Constitutional Court may be seized by the President of the Republic, any member of the National Assembly, any citizen, any association or non-governmental human rights organisation, regarding all laws and regulatory acts deemed to violate fundamental human rights and public freedoms, and human rights in general.

92. It is clear from these texts that the Constitutional Court of Benin can hear, as first and last instance, an action for violation of human rights and that, accordingly, Beninese citizens have a remedy for protection of their human rights at national level.

93. The Court concludes that the Respondent State did not violate Article 7(1) of the Charter.

¹⁶Article 122 of the Constitution states: *“Any citizen may refer matters to the Constitutional Court on the constitutionality of laws, either directly or through the procedure objecting to unconstitutionality in a case that concerns him/her before a court of law.”*

¹⁷In accordance with Article 121 of the Constitution, the President of the Republic or any member of the National Assembly may refer a matter to the Constitutional Court.

¹⁸Likewise, laws and regulatory acts which may infringe fundamental human rights and public freedoms, and violate human rights in general are referred to the Constitutional Court either by the President of the Republic, or by any citizen, association or non-governmental human rights organisation.

¹⁹Any citizen may, by a letter containing his or her surname, first name and precise address, refer matters directly to the Constitutional Court on the constitutionality of laws.

D. Alleged violation of the right to be presumed innocent

94. The Applicant points out that the Ministry of Justice and the Ministry of the Interior of Benin issued an Inter-ministerial Decree No. 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019 prohibiting the issuance of official papers to persons wanted by the courts of Benin in violation of Article 11 of the UDHR.
95. The Applicant asserts that Article 3 of the said decree prohibits the establishment and issuance of official papers on behalf of, and to persons wanted by the courts. The Applicant states that t Article 4 of the decree provides a non-exhaustive list of official papers that may not be issued on behalf of or to persons wanted by the Courts, notably “extracts from civil status records, birth certificates and national identity cards, passport, laissez-passer, safe-conduct certificate, residence permit, consular card, criminal record number 3, certificate or attestation of residence, certificate of life and responsibilities, attestation or certificate of state ownership, driving licence, voter’s card, tax receipt.”
96. The Applicant alleges that the above provisions are inconsistent with certain principles relating to the protection of fundamental human rights, notably the presumption of innocence.
97. The Applicant argues that by refusing to issue the said official papers to persons accused of criminal acts even though they have not been convicted by the courts, the Respondent State intends to prevent citizens from running for the 2021 presidential election.
98. The Respondent State did not make any submissions on this allegation.

99. Article 11 of the UDHR states that:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

100. The presumption of innocence implies that any person prosecuted for an offence is presumed not to have committed it, *a priori*, as long as his or her guilt has not

been established by a final judgment. It is clear that the scope of the right to presumption of innocence covers the entire procedure from the moment of arrest to the delivery of final judicial decision.

101. The Court observes that compliance with the principle of presumption of innocence is not only binding on the criminal court, but also on all other judicial, quasi-judicial and administrative authorities, such as the courts, the judiciary and the administration of justice.²⁰
102. In so doing, any measures taken against a citizen solely on the basis of a procedural act and in the absence of a final decision by the competent authority should presume the innocence of that citizen.
103. The Court further notes that obtaining the official papers entails the right of every person to use public property and services in strict equality of all persons before the law as provided under Article 13(3) of the Charter.
104. The Court also notes that restriction of this right, by prohibiting the establishment and issuance of official papers on behalf of or to persons, who have not yet been convicted of any offence, violates Article 13(3) of the Charter.
105. In the light of the foregoing, the Court concludes that the Respondent State has violated the right to be presumed innocent, as provided under Article 11 of the UDHR and the right of access to public property and services in strict equality of all persons before the law, as provided under Article 13(3) of the Charter.

E. Alleged violation of the right to live in peace in Benin

106. The Applicant submits that it is the responsibility of the Respondent State to ensure that its domestic legislation, in its drafting, interpretation and application, does not undermine peace and the right to live in peace.

²⁰*Sebastien Germain Ajavon v. Republic of Benin*, ACTHPR, Application No. 013/2017 Judgment of 29 March 2019 (merits), § 192.

107. The Applicant submits that the Respondent state has failed to fulfil its obligations, particularly by compelling the people of Benin to vote only for candidates of the party in power, thus breaching confidence between the people and the National Assembly.
108. The Applicant argues that, following the 2019 legislative elections, the people of Benin held demonstrations in reaction to the revision of the Constitution and that there was a violation of fundamental rights when live ammunition was fired at the demonstrators, resulting in deaths. The Applicant alleges that the post-election crisis continues to date.
109. Lastly, the Applicant submits that the Respondent State's actions in this regard violated Article 23(1) of the Charter.
110. The Respondent State argues that there is no link between the alleged violations and the loss of lives.

111. The right to freedom and security of peoples is guaranteed by Article 23(1) of the Charter in the following terms:
- All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the African Union shall govern relations between States.
112. The Court notes that, although the Applicant alleges that the right to freedom and security of persons was violated as a result of the shootings at demonstrators following local and parliamentary elections in 2019, the Applicant does not present specific facts which would enable the Court to make a finding in this regard. The Applicant merely refers to deaths without any further details on the circumstances and the number of people who died.
113. The Court notes that the record shows that the disturbance was temporary and localized, which cannot constitute a breach of peace and public security. The Court therefore concludes that the allegation of breach of the right to peace and security has not been established.

IX. REPARATIONS

114. The Applicant has prayed for the Court to order the Respondent State to take constitutional, legislative and other measures within one month and before the forthcoming election to end the violations established and to inform the Court on the measures taken in this regard.

115. The Respondent State submits that the Court should declare that the violations alleged are unfounded and that the Applicant's prayers should be dismissed.

116. Article 27(1) of the Protocol provides that "[i]f the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

117. The Court has previously held that reparations are only awarded when the responsibility of the Respondent State for an internationally wrongful act is established and a causal nexus is established between the wrongful act and the harm caused. As the Court stated earlier, the purpose of reparations is to ensure that the victim is placed in the situation he or she was in prior to the violation.²¹

118. The Court recalls that it has found that the Respondent State has violated the obligation to ensure that the procedure for amendment or revision of its Constitution is based on national consensus, as provided under Article 10(2) of the ACDEG. The Court has also found that Respondent State has violated the right to be presumed innocent under Article 11 of the UDHR and the right of access to public property and services in strict equality of all persons before the law, as provided under Article 13(3) of the Charter.

119. The Court notes that it has found that the revision of the 1990 Constitution was contrary to the principle of national consensus as enshrined in Article 10(2) of

²¹ See *Lucien Ikili Rashidi v. United Republic of Tanzania*, ACtHPR, Application No. 009/2015, Judgment of 28 March 2019 (merits and reparations), §§ 116-118, and *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema Alias Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabe des droits de l'homme et des peuples v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR, § 60.

ACDEG and that the Inter-Ministerial Decree 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019 violates the principal of presumption of innocence.

X. COSTS

120. Each of the parties prays the Court to order the other party to pay costs.

121. Rule 32(2) of the Rules²² provides that: “Unless otherwise decided by the Court, each party shall bear its own costs, if any.”

122. In the present case, the Court decides that each Party shall bear its own costs.

XI. OPERATIVE PART

123. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

- i. *Dismisses* the objection to the Court’s jurisdiction;
- ii. *Declares* that the Court has jurisdiction.

On the preliminary objections on admissibility

- iii. *Dismisses* the preliminary objections.

²² Formerly Rule 30(2) of the Rules of Court, 2 June 2010.

On admissibility

- iv. *Dismisses* the objection to admissibility of the Application;
- v. *Declares* that the Application is admissible.

On merits

- vi. *Finds* that the Respondent State has not violated the right to an effective remedy for protection of human rights, as provided under Article 7(1) of the Charter and Article 2(3)(a) of the ACDEG;
- vii. *Finds* that the Respondent State has violated the obligation to ensure that the procedure for amendment or revision of its Constitution is based on national consensus, enshrined in Article 10(2) of the ACDEG;
- viii. *Finds* that since the Revised Constitution violated Article 10(2) of the ACDEG, the Applicant's prayer to establish that the revision violated Articles 13(1), 2, 3, 8 of the Charter, Article 19(2) and 18 of the ICCPR, and Article 23(5) of the ACDEG are moot
- ix. *Finds* that the Respondent State has violated the right to be presumed innocent under Article 11 of the UDHR and the right of access to public property and services in strict equality of all persons before the law, as provided under Article 13(3) of the Charter.

On pecuniary reparations

- x. *Finds* that in the absence of the Applicant's submissions on pecuniary reparations, there is no need to rule on this prayer.

On non-pecuniary reparations

- xi. *Orders* the Respondent State to take all measures to repeal Law

No. 2019-40 of 1 November 2019 revising Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws related to the election in order to guarantee that its citizens will participate freely and directly, without any political, administrative or judicial obstacles, in the forthcoming presidential election without repetition of the violations found by the Court and under conditions respecting the principle of presumption of innocence;

- xii. *Orders* the Respondent State to comply with the principle of national consensus enshrined in Article 10(2) of the ACDEG for any constitutional revision;
- xiii. *Orders* the Respondent State to take all measures to repeal Inter-Ministerial Decree 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019.
- xiv. *Orders* the Respondent State to take all measures to guarantee the right
- xv. *Orders* the Respondent State to take all necessary measures to ensure cessation of all effects of the constitutional revision and the violations which the Court has found.

On implementation and reporting

- xvi. *Orders* the Respondent State to submit to the Court, within four (4) months of notification of this Judgment, a report on the measures taken to implement paragraphs xi to xv of this Operative Part.

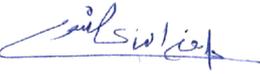
On costs

- xvii. *Decides* that each Party shall bear its own costs.

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 Fourth Day of December, in the year Two Thousand and Twenty, in French and English, the French text being authoritative.

