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		

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(000202- 000195)B5

THE MATTER OF

XYZ

v.

REPUBLIC OF BENIN

APPLICATION No. 010/2020

RULING
(PROVISIONAL MEASURES)
03 APRIL 2020

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

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In the matter of:

XYZ

self-represented

versus

REPUBLIC OF BENIN

represented by:

Mr. Iréné ACLOMBESSI, Treasury Solicitor

After deliberation

Delivers the following Ruling:

I. THE PARTIES

1. XYZ, (hereinafter referred to as "the Applicant") is a citizen of Benin, who, on his request, was granted anonymity before this Court at its 54th Ordinary session held from 2 to 27 September 2019 in Arusha, in a previous case.

2. On 14 November 2019, the Applicant seized the Court with an Application relating to Law No 2019-40 adopted by the National Assembly on October 31, 2019 amending Law No 90-032 of December 11, 1990 which is the Constitution of the

Respondent State. The Applicant is also requesting the Court to order provisional measures.

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3. The Republic of Benin (hereinafter referred to as "the Respondent State") 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 on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 22 August 2014. The Respondent State also deposited, on 8 February 2016, the Declaration prescribed under Article 34(6) of the Protocol accepting the jurisdiction of the Court to receive applications directly from individuals and non-governmental organizations.

II. SUBJECT OF THE APPLICATION

4. In his application on the merits, the Applicant alleges that on 31 October 2019, the National Assembly of the Respondent State passed Law No. 2019-40 of 31 October 2019 amending Law No 90-032 of 11 December 1990 on the Constitution of the Respondent State.

5. According to the Applicant, on 6 November 2019, the Constitutional Court validated the new law following its referral to that effect by the President of the Republic.

6. The Applicant avers that the adoption of the said Law is based on a unilateral review of the Constitution initiated by the President of the Republic for political gains.

7. The Applicant further alleges that the said Constitutional amendment violates the rights protected under Articles 1, 9 (1), 13 (1), 20 (1), 22(1) of the Charter and 10 (2), 23(5) of the African Charter on Democracy Elections and Governance (hereinafter referred to as "ACDEG"). He therefore prays the Court to order the stay of the application of the said law No. 2019-40 to amend Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all other laws emanating therefrom, and a return to the *status quo ante*.

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III.   SUMMARY OF PROCEDURE BEFORE THE COURT

8. On 14 November 2019, the Applicant filed an Application requesting the Court to issue an order for provisional measures notably, to stay the application of the new law relating to the Constitution of the Respondent State and all laws emanating therefrom and to return to *status quo* ante while awaiting the decision on the merits of this Application.

9. The Application was served on the Respondent State which filed its response on the request for provisional measures on 18 March 2020.

IV. JURISDICTION

10. When seized of an application, the Court shall conduct a preliminary examination of its jurisdiction pursuant to Articles 3, 5(3) and 34 (6) of the Protocol.

11. However, with regard to provisional measures and in accordance with its jurisprudence, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply that it has *prima facie*[1] jurisdiction.

12. Article 3(1) of the Protocol stipulates that: "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"

13. The Court notes that the alleged violations, subject of the present Application on the merits, are in respect of the rights protected under Articles 1, 9 (1), 13 (1), 20

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[1] Application No. 002/2013, Order of Provisional Measures of 15 March 2013, *African Commission on Human and Peoples' Rights v. Libya* §. 10; Application No. 024/2016, Order of Provisional Measures of 3 June 2016 in *Amini Juma v. United Republic* of Tanzania, § 8.

(1), 22(1) of the Charter and 10 (2), 23(5) of the ACDEG, instruments to which the Respondent State is a party. The Court therefore holds that it has material jurisdiction

14. In light of the above, the Court finds that it has *prima facie* jurisdiction to hear the application.

V.   PROVISIONAL MEASURES REQUESTED

15. The Applicant prays the Court to order the Respondent State to stay implementation of Law No. 2019-40 of 31 October 2019, to amend Law 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all laws emanating therefrom, and to return to the *status quo ante*, while awaiting the decision on the merits of this Application.

16.   To support his Application for Provisional Measures, the Applicant avers that the fact that constitutional amendment is "a known practice in the world", does not prevent the Court from ruling on the present matter, especially if it is alleged that a State has done so to the extent where human rights as guaranteed in the Charter have been violated. He further submits that the Charter is an international treaty which takes precedence over the Constitution in the event of inconsistencies.

17. The Applicant submits that the adoption of Law No. 2019-40 of 31 October 2019, to amend Law No.90-032 of 11 December 1990 on the Constitution of the Respondent State has a "devastating" effect on democracy in the country.

18. He claims that irreparable harm will be caused to the people of Benin because the said new constitution legitimizes a parliament based on the violent and non-inclusive elections of 28 April 2019.

19. According to the Applicant, evidence of extreme gravity resides in the fact that the said constitutional amendment introduces major and new reforms without the slightest consensus.

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20. The Respondent State avers that the constitutional amendment involved all the political stakeholders of the country who decided to reshape the "partisan" system to make it "professional".

21. For the Respondent State, the request for provisional measures is inadmissible because it does not meet the conditions set out in Article 27, notably, the requirements of extreme gravity or urgency and the goal of avoiding irreparable harm to persons. The Respondent State explains that urgency means a situation that may, if not resolved within a short time, lead to a situation of much violence of an unprecedented nature, irreparable harm for the population.

22. The Respondent State concludes that the situation presented by the Applicant does not meet any of the conditions laid down in support of provisional measures.

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23. The Court notes that Article 27(2) of the Protocol provides that:
"In cases of extreme gravity or urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary".

24. Furthermore, Rule 51(1) of the Rules further provides that:
"Pursuant to Article 27(2) of the Protocol, the Court may, at the request of a party, the Commission, or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice".

25. In light of the aforementioned provisions, the Court will take into account the applicable law in regard to provisional measures which are of a preventive character and do not prejudge the merits of the Application. The Court cannot issue an Order *pendente lite* except if or where the basic requisite conditions have been

met, that is, extreme gravity, urgency and prevention of irreparable harm to persons.

26. The Court notes that urgency, which is linked to extreme gravity, means a [*real and imminent likelihood that irreparable harm will be caused before it renders its final decision*][2]. Further, there is urgency whenever acts that are likely to cause irreparable harm can *"occur at any time"* before it renders its final decision in the matter[3].

27. The court notes that although the Applicant underscored the importance and scope of the said constitutional amendment and for all the citizens of the Respondent State, he failed to meet the requirements of Article 27 of the Protocol, he didn't provide proof of extreme gravity or urgency or the risk of serious and irreparable harm this constitutional amendment which he claims has a "devastating" effect on democracy in the country may cause him or others in the immediate future, before this Court rules on the merits.

28. In light of the above, the request for provisional measures is dismissed.

IV. OPERATIVE PART

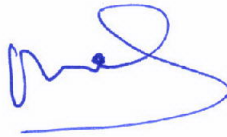29. For these reasons,

THE COURT,

Unanimously,

Dismisses the request for provisional measures.

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[2] - International Court of Justice: Application on the Convention for the Prevention and Punishment of the crime of Genocide (*Gambia v. Myanmar*), para 65, 23 January 2020; Alleged violations of the Treaty of Friendship, Commerce and Consular Relations of 1955 (*Islamic Republic of Iran v. United States of America*), 03 October 2018; Immunities and Criminal proceedings (*Equatorial Guinea v. France*), 7 December 2016, para 78, (*Equatorial Guinea v. France*), 7 December 2016, para 78, International Court of Justice.

[3] - Ibid. Footnote 2.

Signed:

Sylvain ORE, President;

and Robert ENO, Registrar.

Done at Arusha this 3rd Day of April 2020, in English and French, the French text being authoritative.