AFRICAN UNION		UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUENOU

V.

REPUBLIC OF BENIN

APPLICATION No. 004/2020

RULING
(PROVISIONAL MEASURES)

22 NOVEMBER 2021

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

In the Matter of:

Houngue Éric NOUDEHOUENOU
Represented by:
Ms. Nadine DOSSOU SAKPONOU, Lawyer of the Benin Bar.

Versus

REPUBLIC OF BENIN
Represented by:
Mr. Irene ACLOMBESI, Judicial Agent of the Treasury

after deliberation,
renders the following Ruling:

I. THE PARTIES

1. Mr. Houngue Éric Noudehouenou, (hereinafter referred to as "the Applicant") is a national of the Republic of Benin. He is seeking orders for provisional measures with respect to the Judgment of 25 July 2019 of the Court for the Repression of Economic Crimes and Terrorism (hereinafter referred to as "CRIET").

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. The Respondent State further deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") on 8 February 2016, by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-governmental Organisations. On 25 March 2020, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument of withdrawal of its Declaration. The Court held that this withdrawal had no bearing on pending cases or new cases filed before the withdrawal came into effect, that is, one year after its filing, on 26 March 2021.[1]

II. SUBJECT OF THE APPLICATION

3. On 21 January 2020, the Applicant filed the Application on the merits together with a first request for provisional measures. He alleged the violation of his rights during criminal proceedings initiated against him before the CRIET. On 6 May 2020, the Court issued a Ruling on this request for provisional measures.

4. On 19 July 2021 and 10 August 2021, the Applicant filed two new requests respectively, for provisional measures in relation to the Judgment of 25 July 2019 of the CRIET which "sentenced him to ten (10) years' imprisonment for abuse of office and unauthorised use of title, issued a warrant of arrest and ordered him to pay the sum of CFA Francs one billion two hundred and seventy seven million, nine hundred and ninety five thousand, four hundred and seventy four (1,277,995,474 CFA) to CNCB as compensation for the prejudice that they had suffered". By the Ruling on provisional measures issued on 6 May 2020, the Court ordered the Respondent State to stay execution of the said judgment.

[1] *Houngue Éric Noudehouenou v. Republic of Benin,* ACtHPR, Application No. 004/2020, Order of 6 May 2020 (provisional measures), § § 4- 5 and corrigendum of 29 July 2020.

5. The Applicant claims that in spite of the Ruling of 6 May 2020, he has been forced to go into hiding.
6. He specifically states in the request for provisional measures of 19 July 2021 (hereinafter referred to as the "19 July 2021 request") that his health is continuously and dangerously deteriorating. He states that he is unable to adequately meet his medical needs, as he risks arrest and imprisonment by virtue of a decision that violates his rights. The Applicant further submits that he risks being killed, since he has already escaped an assassination attempt on 31 October 2018.

7. In addition, he avers, that although he was able to obtain some medication with difficulty, from September 2020, to ease the pain resulting from the ailments he suffers from; the pain has been increasingly persistent and the anxiety attacks have become more severe, together with insomnia, vomiting, persistent headaches, indigestion and gastric reflux, abdominal and neurological pain.

8. He claims that his state of health requires thorough medical consultations and analyses, hospitalisation for closer observation and specialised medical care, which he is unable to obtain because of the obstacles posed by the Respondent State, notably the arrest warrants resulting from the CRIET Judgment in disregard of the Ruling on provisional measures issued by this Court on 6 May 2020.

9. In the Request for provisional measures of 10 August 2021 (hereinafter referred to as " the Request of 10 August 2021"), the Applicant submits that in execution of the CRIET's Judgment of 25 July 2019, his bank accounts were frozen and from November 2021, he will no longer have the financial resources to meet his family's basic needs and cover his own health costs

10. The Applicant also submits that, he cannot appear personally at a real estate legal proceeding pending before the Cotonou Court, whereas the

said Court requires his presence at the hearing of 2 December 2021, failing which, a decision will be entered against him.

11. It is in this context that the Applicant requests the Court to issue a Ruling on provisional measures, ordering the Respondent State to remove the impediments to his medical care, to stay the arrest warrants issued against him, to disclose an expert report, and to issue a public apology. He also requests for provisional measures to unfreeze his bank accounts, issue identity documents and preserve his rights.

III. ALLEGED VIOLATIONS

12. The Applicant alleges the violation of:
    i. his right to be tried by a competent tribunal, equality of all before the courts, to an impartial tribunal, to a reasoned decision respecting the principle of adversarial proceedings, to protection against arbitrariness and to legal certainty, all protected under the Charter and Articles 10 of the Universal Declaration of Human Rights (UDHR) and 14(1) of the International Covenant on Civil and Political Rights (ICCPR);
    ii. his rights to defence, including in particular equality of arms, to be defended by counsel, to facilities necessary for the organization of his defence, to the notification of the indictment and the charges, to participate in his trial, to the adversarial principle, to present evidence and arguments, to cross-examine prosecution witnesses, to be present at his trial, protected under Articles 14(3) of the ICCPR and 7(1)(c) of the Charter;
    iii. his right to appeal against judgments protected under Articles 10 of the (UDHR), 7(1)(a) of the Charter and 2(3) of the ICCPR;
    iv. his right to have his conviction and sentence reviewed under Article 14(5) of the ICCPR;
    v. his right to the presumption of innocence protected under Article 7(1) of the Charter;
    vi. his rights to paid work, to property and an adequate standard of living, protected under Articles 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 15 and 14 of the Charter and 23 of the UDHR;

vii. his right to reputation and dignity, not to be subjected to inhuman and degrading treatment protected under Articles 7 of the ICCPR and 5 of the Charter, and his right to freedom of movement, protected by Articles 12, 14(5) and 17 of the ICCPR.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. On 21 January 2020, the Applicant filed the Application on the merits together with a request for provisional measures. These were served on the Respondent State on 18 February 2020.

14. On 6 May 2020, the Court issued a Ruling on provisional measures ordering the Respondent State to "stay the execution of the judgment of 25 July 2019 delivered by the Court for the Repression of Economic Crimes and Terrorism against the Applicant, Houngue Eric Noudehouenou, until the final decision of this Court". The Order was transmitted to the Parties on 6 May 2020.

15. On 20 July and 10 August 2021, the Applicant filed two further requests for provisional measures. They were served on the Respondent State on 2 August 2021 and 23 August 2021 respectively, to submit its Response within fifteen (15) days of receipt.

16. On 17 August 2021, the Respondent State filed its Response on the Request for provisional measures of 20 July 2021. It however, did not respond to the Request of 10 August 2021 within the time-limit.

17. The Court notes that both requests for provisional measures are related to the CRIET's judgment of 25 July 2019. It therefore decides to join them and issue a single Ruling.

V. *PRIMA FACIE* JURISDICTION

18. The Applicant asserts, on the basis of Article 27(2) of the Protocol and Rule 51(1) of the Rules, in matters of requests for provisional measures, the Court does not have to satisfy itself that it has jurisdiction over the merits of the case but simply that it has *prima facie* jurisdiction.

19. Referring further to Article 3(1) of the Protocol, the Applicant submits that the Court has jurisdiction insofar as the Respondent State has ratified the Charter and the Protocol, and has also filed the Declaration provided for in Article 34(6) of the Protocol. He alleges that although the Respondent State withdrew the said Declaration on 25 March 2020, the Court has already held that "this withdrawal can only take effect from 26 March 2021 and has no bearing on cases filed before the Court before that date."

20. The Applicant further alleges that the Respondent State has violated his rights protected by human rights instruments to which it is a party. He asserts that, the Court has *prima facie* jurisdiction to hear the requests for provisional measures.

21. The Respondent State did not respond to this point.

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22. The Court notes that the rights which the Applicant alleges to have been violated, are all protected by the Charter and human rights instruments to which the Respondent State is a party. [2] The Court further notes that the Respondent State is a party to the Protocol and has deposited the Declaration provided for in Article 34(6) of the Protocol. The Court recalls that, in the Ruling of 6 May 2020[3] , it decided that the withdrawal of the Declaration by the Respondent State does not affect its personal jurisdiction in this case.

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[2] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 585, § 67.
[3] *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 004/2020, Order of 6 May 2020 (provisional measures), §§ 4-5 and corrigendum of 29 July 2020.

23. The Court further clarifies that although the requests for provisional measures were filed after the withdrawal came into force on 26 March 2021, this does not affect its personal jurisdiction in the present case either, since the said requests are related to the Application on the merits filed on 21 January 2020 before the said withdrawal.

24. The Court, therefore, concludes that it has *prima facie* jurisdiction to hear the requests for provisional measure.

VI. PROVISIONAL MEASURES REQUESTED

25. In the Request of 19 July 2021, the Applicant requests the following provisional measures:

    i. Request the Respondent State to take all appropriate measures, first, to remove all obstacles to his right to health, including obstacles to obtaining his file at the CNHU without let or hindrance and all obstacles to medical consultations, medical examinations, hospitalization, medical reviews, and to his surgical operation that he has been awaiting since 2018, and secondly, to ensure that his doctors are effective effectively protected against any prosecution and any arrest, failing that, to provide him with the means and a host country where he will receive adequate health care without being hindered by the Respondent State;

    ii. Request the Respondent State to suspend arrest warrants and detention orders and deprivation of liberty until the final decision of this Court on the merits and reparations;

    iii. Request the Respondent State to apologise to the Court for having persistently invented and used twenty-four (24) imaginary and false facts before the CRIET and before this Court.

    iv. Request the Respondent State to produce, without delay, and "through the Registry of the Court," especially the entire report of the judicial expert written by Mr. ASSOSSOU Pedro d'Assomption and mentioned in the judgment of CRIET;

    v. Request the Respondent to implement the above listed measures within three days of notification of the Court's Ruling; and to report to the Court

on the implementation of this Ruling within fifteen days of the date of notification of this Ruling;

26. In the request of 10 August 2021, the Applicant requests the following provisional measures:

    vi. unfreezing of his bank accounts and removal of obstacles to him appearing before the Cotonou Tribunal on 2 December 2021;

    vii. Issuance of valid identity document in accordance with paragraphs 1123.xiv and 123.xv of the Judgment of 4 December 2020, Application No. 003/2020;

    viii. Request the Respondent State, by virtue of Articles 2(3) and 14(1) of the ICCPR, Article 8 of the UDHR, Articles 7 and 14 of the Charter, to take all appropriate measures to guarantee the Applicant, the effective enjoyment of his right to a ruling in his case concerning his right to property, his right to an effective remedy, to legal certainty and to a fair trial before the Cotonou Court at the hearing of 2 December 2021 and subsequent days notwithstanding his absence given the presence of his counsel, the fact that he has made submissions on the merits since 27 October 2017.

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27. 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 considers necessary."

28. It notes that it has the duty to decide, in each individual case whether, in the light of the particular circumstances of the case, it should exercise the jurisdiction conferred on it by the above provision.

29. The Court recalls that urgency, consubstantial with extreme gravity, means a "real and imminent risk that irreparable harm will be caused before it renders its final judgment."[4]

[4] *Ajavon Sébastien v. Republic of Benin,* ACtHPR, Application No. 062/2019, Order for provisional measures, 7 April 2020, § 61.

30. It emphasizes that the risk in question must be real, which excludes the purely hypothetical risk and justifies the need to repair it immediately.[5]

31. With regard to irreparable harm, the Court considers that there must exist a "reasonable probability of materialization" having regard to the context and the personal situation of the applicant [6]

i) On the obstacles to medical care and protection

32. The Applicant argues that by not implementing the Court's Order for provisional measures, the Respondent State has made it impossible for him to receive proper health care in his own country, for fear of arrest or assassination. He further argues that his medical providers, housekeeper and family members would be deprived of their liberty for harbouring a criminal if they continue to hide him and provide him with care in such a situation.

33. In this respect, he submits that there is an urgent need to address the worsening headaches, abdominal pain and lower limb pain caused by blood circulation problems.

34. He avers that the growth in the inner tissue of his abdomen, which is in an advanced stage, causes him great pain, prevents him from sitting properly and that he therefore requires surgery.

35. With regard to irreparable harm, the Applicant states that if he is unable to acquire medication and receive proper care as soon as possible, he will suffer irreversible damage to his health and even death.

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[5] *Ibid*, § 62.
[6] *Ibid*, § 63.

36. The Respondent State argues that the only way for a sick person to seek treatment is to go to a hospital to receive appropriate treatment, and not to seek injunctions from a court.

37. The Respondent State further argues that nothing prevents the Applicant from going to the hospital if he is really ill, which demonstrates the absence of urgency and irreparable harm.

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38. The Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. However, the Applicant has not provided the Court with any evidence of his poor health other than mere assertions. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

39. The Court therefore considers that there is no basis to order the measure requested.

ii) On the stay of the arrest warrant issued in accordance with the CRIET's judgment of 25 July 2019.

40. The Applicant argues, as a matter of urgency, that his arrest and deprivation of liberty as a result of the warrants issued against him following the CRIET's judgment of 25 July 2019, may occur at any moment before the Court rules on the merits. He argues that there is a compelling reason for him not to be arbitrarily detained as a result of a judgment rendered in violation of his rights.

41. With regard to irreparable harm, the Applicant argues that in the absence of a stay of execution of the warrants, he is deprived of the means of livelihood since he cannot work, and is unable to receive proper medical care. This situation, he argues is causing his health to deteriorate, and may occasion his death.

42. He also avers, that he is also unable to travel in person to the human rights courts to plead the cases he has instituted.

43. The Respondent State did not respond to this point.

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44. The Court notes that the CRIET's judgment of 25 July 2019 sentenced the Applicant to ten (10) years' imprisonment for abuse of office and "unauthorised use of title", issued a warrant of arrest and ordered him to pay the sum of CFA francs one billion, two hundred and seventy-seven million, nine hundred and ninety-five thousand, four hundred and seventy-four (CFA 1,277,995.474) to the CNCB as reparation for prejudice suffered;

45. The Court recalls that on 6 May 2020 it issued a Ruling on provisional measures as follows:[7]

> Orders the Respondent State to stay execution of the judgment of 25 July 2019 rendered by the Court of the Repression of Economic Crimes and Terrorism against the Applicant, Houngue Éric Noudehouenou, until the final decision of the Court.

46. In this regard, since the stay of execution pronounced by the Ruling of 6 May 2020 concerns the arrest warrant that is still in force, and the Respondent State is obliged to implement it, the Court considers that there is no need to grant the same measure again.

47. Accordingly, the Court dismisses the requested measure.

iii) On the apology by the Respondent State

48. The Applicant argues in the Application on the merits, that the Respondent State based its arguments on twenty-four (24) false and imaginary facts,

[7] *Idem.*

publicly described the decisions of the Court to be grossly incongruous, as such, in the interests of justice, the Respondent State should be ordered to adduce proof of its allegations, and failing that, it should apologise to the Court and the Applicant.

49. He claims that these lies have created mistrust in the business and labour community concerning him. He further submits that the Respondent State should apologise as a matter of urgency to avoid irreparable damage to his livelihood and his right to work.

50. The Respondent State did not respond to this point.

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51. The Court finds that this issue lacks urgency, and therefore cannot be examined at the stage of provisional measures.

52. Accordingly, the Court dismisses the requested measure.

iv) Request to produce the expert report referred to in the CRIET judgment

53. The Applicant alleges that he was convicted by the CRIET on the basis of a number of documents including an expert report drafted by Mr. Assossou Pedro d'Assomption which implicated him and estimated the loss suffered by the Respondent State as a result.

54. He maintains that to date the Respondent State has not disclosed these documents to him, thereby violating his right to a remedy and a fair trial.

55. He believes that there is urgency because this Court can rule at any time and there will be irreparable harm if the Application is dismissed on the merits.

56. The Respondent State argues in response that there is no urgency in disclosing the expert report. It argues further, that the Court is not a court

of appeal from the CRIET and can therefore not rule on the irregularities pleaded against the procedure followed before that court.

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57. The Court notes that the Applicant seeks an order to instruct the Respondent State to provide him with the expert report, claiming that the Respondent State's failure to disclose it during the proceedings before CRIET violated his rights.

58. The Court observes that the Respondent State does not contest the allegation of failure to disclose the expert report, nor does it question the importance attached to it by the Applicant in the CRIET proceedings in respect of which the Applicant alleges a violation of rights.

59. The Court therefore considers that disclosure of the report is necessary for the Applicant to assert his rights before it and the failure to disclose the report is likely to cause him irreparable harm. Since his Application is under consideration by the Court, submission of the report requires urgent action by the Respondent State. In these circumstances, the Court finds that the measure sought is justified.

60. Accordingly, the Court orders the Respondent State to disclose to the Applicant or his Counsel the expert report referred to in the CRIET's judgment of 25 July 2019.

v) Enforcement of the Ruling and to report on the enforcement

61. The Applicant submits that all the provisional measures requested herein relate to his fundamental rights, including health and life. Therefore, he submits that the implementation of this Ruling is urgent and should be done within a short time.

62. The Respondent State did not respond to this request.

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63. The Court notes that the provisional measures it orders are of immediate effect, as such, the measure sought is unnecessary.

64. The Court observes that the measure ordered in the present Ruling to produce the expert report relied upon in the proceedings against the Applicant before the CRIET fulfils the requirements of Article 27(2) of the Protocol as regards urgency and therefore requires immediate implementation. Therefore, the Respondent State should report on the implementation of that ruling as soon as possible.

65. Accordingly, the Court orders the Respondent State to report back within fifteen (15) days from the date of notification of this Ruling.

vi) Request to unfreeze bank accounts and remove obstacles to his presence at the hearing

66. The Applicant contends that on the basis of the CRIET Judgment of 29 July 2019, all the accounts to which he is a signatory were blocked and arrest warrants issued against him, whereas by the Ruling on provisional measures of 6 May 2020, this Court had ordered a stay of execution of the said judgment.

67. He argues that his bank accounts should be unfrozen urgently to enable him have the financial resources to meet the basic needs of his family and his health care. He explains that without his resources which are blocked, from November 2021, he and his family will be exposed to irreparable harm of indigence leading to an irreversible impact on the future and the full development of his children who are minors.

68. He further argues that failure to appear at the hearing of 2 December 2021 before the Court of Cotonou in relation to a real property belonging to him,

and in which the judge requires his presence, he may irreversibly forfeit ownership of the said property.

69. The Respondent State did not respond to this request.

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70. The Court notes that, on 6 May 2020 in the present Application No. 004/2020, it issued an order to stay execution of the Judgment of 25 July 2019 of CRIET.

71. The Court observes that the CRIET Judgment issued an order to freeze the Applicant's bank accounts. It further notes that the Applicant did not provide evidence that his bank account was blocked in execution of the CRIET judgment.

72. Regarding the obstacles to his presence in court as a result of the CRIET judgment, the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again.

73. Accordingly, the Court dismisses this request.

vii) Issuance of an identity document

74. The Applicant submits that since he is wanted by the Respondent State in execution of the CRIET Judgment of 7 July 2019, he cannot be issued a valid identity card, pursuant to Inter-Ministerial Decree No. 023/MJL/DC/SGM/DACPG/SA 023SGGG19 dated 22 July 2019, which is still valid as long as the Respondent State has not repealed it as ordered by the Court in the Judgment of 4 December 2020, Application No. 003/2020, rendered in his favour.

75. He posits that without this document, it is impossible for him to access his bank accounts in the event of unblocking of said accounts.

76. He argues that it is an emergency because from November 2021, he will no longer have financial resources, a situation which is likely to irreversibly prejudice their existence since he would no longer be able to meet his needs or those of his family.

77. The Respondent State did not respond to this request.

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78. The Court notes that on 4 December 2020 it rendered a judgment in Application No. 003/2020, *Houngue Eric Noudehouneou v. Republic of Benin*, ruling that "the Respondent State has violated the right "to use public property and services in strict equality of all persons before the law as provided for under Article 13(3) of the Charter" and ordered the Respondent State "to take all measures to repeal Inter-Ministerial Decree No. 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019."[8]

79. The Court notes that the Applicant's inability to obtain the national identity card is due to the Respondent State's failure to comply with the provisional measures ordered in the judgment of 4 December 2020.

80. The Court observes that this situation causes prejudice to the Applicant to the extent that, without a valid identity document, it is impossible for him to carry out banking operations related to his bank account.

81. The Court considers that there is a real possibility that the Applicant may not be able to access his account, and that irreparable harm may result from this.

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[8]*Houngue Éric Noudehouenou v. Republic of Benin,* ACtHPR, Application No. 003/2020, Judgment of 4 December 2020 (merits and reparations), § 123 (x) and (xv).

82. Accordingly, the Court grants the request for issuance of the national identity card.

viii) Respect of rights by the Cotonou Tribunal

83. The Applicant avers that at the hearing of 15 July 2021 in the context of a real estate procedure between him and one Elbaz David, despite the regular presence of his Counsel before the Cotonou Tribunal, the judge requires his physical presence at the hearing of 2 December 2021, failing which, a decision will be rendered against him.

84. He argues that the intention of the Cotonou Court is to violate, at the hearing of 2 December 2021, his fundamental rights protected by Articles 2(3) and 14(1) of the ICCPR, Articles 7 and 14 of the Charter and Article 8 of the UDHR, hence the urgent need for this Court to avert such violations.

85. Regarding the irreparable harm, he maintains that the court's decision will result in the definitive loss of the disputed real property and consequently the loss of the rental income of the said property.

86. The Respondent State did not respond to this request.

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87. The Court notes that the requested provisional measure is based on potential violation of rights protected by the Charter, ICCPR and UDHR by the Cotonou Court.

88. The Court observes that the Applicant pre-empts the decision of the Cotonou Court. The Court further observes that the Applicant did not provide any evidence to show that the Cotonou Court will violate the alleged rights.

89. Accordingly, the Court dismisses the provisional measure requested.

90. For the avoidance of doubt, this Ruling is provisional in nature and in no way prejudges the decision the Court may take on its jurisdiction and the admissibility and merits of the Application.

VII. OPERATIVE PART

91. For these reasons,

The COURT,

By a majority of Seven (7) in favour and Four (4) against, Judge Ben KIOKO, Judge Rafaâ BEN ACHOUR, Judge Tujilane R. CHIZUMILA and Judge Chafika BENSAOULA Dissenting,

i. *Dismisses* the requests for provisional measure relating to obstacles to medical care and protection ;
ii. *Dismisses* the requested provisional measures to unfreeze the Applicant's bank account and to remove obstacles to his presence before the Cotonou Court;

Unanimously,

iii. *Dismisses* the request to stay execution of the arrest warrant pursuant to the CRIET's judgment of 25 July 2019;
iv. *Dismisses* the request for a public apology;
v. *Dismisses* the request regarding observance of the Applicant's rights by the Cotonou Court;
vi. *Orders* the Respondent State to disclose to the Applicant or his Counsel the expert report referred to in the CRIET judgment of 25 July 2019;
vii. *Orders* the Respondent State to take all measures to issue a valid national identity card to the Applicant;
viii. *Orders* the Respondent State to report to the Court on the implementation of the measures ordered in (vi) and (vii) above, within fifteen (15) days of notification of this Ruling.

Signed:

Imani D. ABOUD, President;

Robert ENO, Registrar;

In accordance with Article 28(7) of the Protocol and Rule 70 of the Rules, the Dissenting Opinion of Justice Ben KIOKO, and Declarations of Judge Rafaâ BEN ACHOUR, Judge Tujilane R. CHIZUMILA and Judge Chafika BENSAOULA are appended to this Ruling.

Done at Dar es Salaam, this Twenty-Second Day of November in the year Two Thousand and Twenty-one, in English and French, the French text being authoritative.

DECLARATION DU JUGE RAFAA BEN ACHOUR

ORDONNANCE PORTANT MESURES PROVISOIRES

AFFAIRE

HOUNGUE ÉRIC NOUDEHOUENOU C. RÉPUBLIQUE DU BENIN

REQUÊTE N° 004/2020

1. Conformément à l'article 70(3) du Règlement intérieur de la Cour, je déclare par la présente que je ne partage pas les décisions de la majorité de la Cour en vertu desquelles elle rejette les deux premières demandes formulées par le Requérant de mesures provisoires à savoir :
    (i) la levée des obstacles aux soins médicaux et de protection, et
    (ii) la demande tendant au déblocage des comptes bancaires et à la levée des obstacles à la présence du Requérant à l'audience prévue en décembre 2021.

2. Par la présente, je déclare partager entièrement l'opinion dissidente exprimée à propos de l'ordonnance ci-dessus par l'Honorable juge doyen Ben Kioko. Je fais miens les arguments qu'il développe et exprime la même réserve quant aux conclusions de la Cour sur les deux rejets mentionnés ci-dessus.

I. Le rejet de la demande de levée des obstacles aux soins médicaux et de protection

3. Pour motiver son refus d'ordonner la levée des obstacles aux soins médicaux, la Cour estime que le Requérant n'a fourni à la Cour

aucune preuve de son mauvais état de santé autre que de simples affirmations :

> La Cour note que le Requérant allègue qu'il souffre actuellement de graves problèmes de santé nécessitant un traitement urgent et qu'il est suivi par un médecin personnel. Toutefois, le Requérant n'a fourni à la Cour aucune preuve de son mauvais état de santé autre que de simples affirmations**.** Il n'a donc pas suffisamment démontré l'urgence et le préjudice irréparable auxquels il est confronté, comme l'exige l'article 27 du Protocole.

4. En réalité, la Cour n'a pas accordé d'importance ni à la situation personnelle du Requérant, ni aux observations détaillées qu'il a présentées, ni aux raisons qu'il a évoquées pour n'avoir pas pu soumettre de rapports médicaux. La Cour n'a pas également tenu compte des ordonnances antérieures rendues par la Cour dans la même affaire.

5. Dans son opinion dissidente, à laquelle je me joins, le Juge doyen Ben Kioko, a suffisamment développé les arguments présentés par le Requérant et que la Cour aurait dû retenir pour ordonner la mesure demandée en se fondant sur la situation personnelle du Requérant[1], sur la précarité de son état de santé[2] et sur l'impossibilité matérielle, pour lui, de produire les rapports médicaux[3].

6. Il ressort du volumineux dossier que le Requérant a non seulement fourni un exposé détaillé de sa situation personnelle, une description précise de son état de santé actuel et a fourni les raisons pour

[1] Voir notamment : § 12 et 13 de l'Opinion du Juge Kioko.
[2] Voir notamment : § 16, 18, 19 et 20 de l'Opinion du Juge Kioko.
[3] Voir notamment : § 24, 25, 26, 27 de l'Opinion du Juge Kioko.

lesquelles il s'est trouvé dans l'impossibilité totale de fournir de copies des rapports médicaux.

II. Le rejet de la demande de déblocage des comptes bancaires et la levée des obstacles à la présence devant le tribunal de Cotonou le 2 décembre 2021.

7. Statuant sur la demande de déblocage des comptes bancaires et sur la levée des obstacles à la présence du Requérant devant le tribunal de Cotonou, la Cour de céans rappelle qu'elle avait rendu une ordonnance le 6 mai 2020 dans la même requête (n° 004/2020) ordonnant le sursis à l'exécution de l'arrêt du 25 juillet 2019 de la Cour de répression des infractions économiques et de terrorisme (CRIET), qui avait notamment bloqué les comptes bancaires du Requérant. A cet effet, la Cour fait observer :

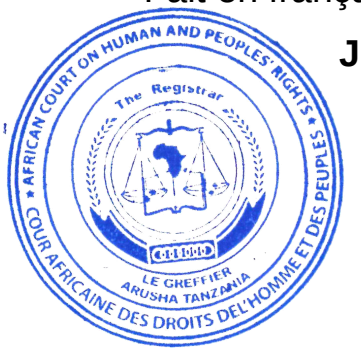
> que l'arrêt de la CRIET a émis une ordonnance de blocage des comptes bancaires du Requérant. Elle note en outre que le Requérant n'a pas apporté la preuve que son compte bancaire a été bloqué en exécution de l'arrêt de la CRIET.
>
> S'agissant des obstacles à sa présence au tribunal du fait de l'arrêt de la CRIET, la Cour relève que, le sursis à l'exécution de la peine de 10 ans ordonné par l'ordonnance du 6 mai 2020 restant effectif, la Cour estime qu'il n'y a pas lieu de rendre à nouveau la même ordonnance.
>
> En conséquence, la Cour rejette cette demande.

8. La motivation ci-dessus ne manque pas de surprendre, puisque la Cour admet explicitement que « l'arrêt de la CRIET a émis une ordonnance de blocage des comptes bancaires du Requérant » pour se déjuger une phrase après, et dire que « le Requérant n'a pas apporté la preuve que son compte bancaire a été bloqué en exécution de l'arrêt de la CRIET » (!)

9. Pourtant, le Requérant a fourni à la Cour toutes les preuves nécessaires pour la convaincre de la précarité où il vit du fait de l'absence de ressources. La Cour en a décidé autrement alors que l'urgence et le préjudice irréparable ont été amplement prouvés.

Fait en français le 22 novembre 2021

Juge Rafaâ Ben Achour



DISSENTING OPINION OF JUSTICE BEN KIOKO

THE MATTER OF

HOUNGUE ERIC NOUDEHOUENOU v REPUBLIC OF BENIN

APPLICATION NO. 004/2020

RULING ON PROVISIONAL MEASURES

1. The Order of Provisional Measures issued in the case referred to was an important and innovative step forward in the determination of procedural matters at the Court. It has, in fact, given the Court the opportunity, not to proceed to issue an order for joinder of proceedings within the meaning of Rule 62 of the Rules of Court, but to decide, to make one and the same order in the instant case where it was seized with two requests for provisional measures filed on July 19 and August 10, 2021 within the same application.

2. The reason for such a step is to be found in the interests of administration of justice, justified, in this case, by the link between the two requests with the judgment of July 25, 2019 by which the Court of Repression Economic Offenses and Terrorism (CRIET judgment) found the Applicant guilty of the offenses of abuse of office and unauthorised use of title, and sentenced him to a prison sentence of ten (10) years, accompanied by a warrant of arrest as well as a fine in the sum of one billion two hundred and seventy-seven million nine hundred and ninety-five thousand four hundred seventy-four thousand (1,277,995,474) CFA francs. With the solution adopted in this procedural aspect, I agree entirely with my honourable colleagues.

3. In the Request of 19 July 2021, the Applicant prayed for the following provisional measures:

    a) Order the Respondent State to take all appropriate measures to remove all obstacles to his right to health, in particular the obstacles to obtaining his file from the CNHU in complete freedom and all obstacles to medical consultations, medical examinations, hospitalisation, medical follow-up and the surgery he has been waiting for since 2018, and secondly to ensure the effective protection of

his doctors against any prosecution or arrest, failing that, to provide him with the means and a host country where he will receive proper medical unimpeded by the Respondent State.

b) Order the Respondent State to stay arrest warrants and deprivation of liberty until the final decision of this Court on the merits and reparations;
c) Order the Respondent State to apologise to the Court for having pleaded twenty-four (24) imaginary and false facts before the CRIET and before this Court.
d) Order the Respondent to produce, without delay, and "through the Registry of the Court," the entire report of the judicial expert drafted by Mr. ASSOSSOU Pedro d'Assomption and referred to in the judgment of the CRIET;
e) Order the Respondent to implement the above measures within three days of notification of the Court's Order; and to report to the Court on the implementation of this Order within fifteen days of the date of notification of this Order;

4. In the Request of 10 August 2021, the Applicant prayed for the following additional provisional measures:

f) Measures to unblock his bank accounts and remove obstacles to his presence before the Cotonou Court on 2 December 2021;
g) Issuance of the valid identity document in accordance with paragraphs 1123.xiv and 123.xv of the Judgment of 4 December 2020, Application No. 003/2020;
h) Order the Respondent State, under Articles 2(3) and 14(1) of the ICCPR, Article 8 of the UDHR, Articles 7 and 14 of the Charter, to take all appropriate measures to guarantee the Applicant, the effective enjoyment of his right to be heard in his case concerning his right to property, his right to an effective remedy, to legal certainty and to a fair trial before the Cotonou Court at the hearing of 2 December 2021 and subsequent days notwithstanding his absence given the presence of his counsel, the fact that he made his submissions on the merits since 27 October 2017.

5. I also entirely agree with the majority decision with respect to prayers no: b), c), d), e), and g) as set out in paragraphs 3 and 4 above. That is not the case, however, as regards the other measures requested by the Applicant, namely, prayers no: a), f) and h), as I do not agree at all with the majority decision.

6. I am, in fact, dissenting on the decisions rejecting the measures relating to (I) the lifting of obstacles to medical and protective care, and (II) Request to unblock bank accounts and remove obstacles to the applicant's presence at the hearing listed for hearing in December 2021**.** I believe that the rejection of these measures is based on a partial analysis of the facts of the case, and the fact that the Court completely disregarded the link between the measures requested and those previously ordered by the Court in the same Application and which the Respondent State had failed to implement.

I. On the rejection of the measure relating to the removal of obstacles to health care and protection

a) Partial analysis of the facts of the case

7. It is useful to recall that on 21 January 2020, the Applicant filed the Application on the merits together with a first request for provisional measures, in which he alleged the violation of his rights during legal criminal proceedings initiated against him before CRIET. On 6 May 2020, the Court issued a Ruling on this request for provisional measures, ordering a stay of execution of the judgment of CRIET and all other measures of execution until the determination of the merits of Application. The state was also ordered to submit an implementation report. To date, no such report has been received and nothing on record indicates that the Respondent State has implemented the Order for Provisional measures of 06 May 2020.

8. Indeed, the applicant has contended that all the measures requested for arise from the failure of the Respondent State to comply with three Orders for provisional

measures[1] and four judgments[2] of this Court, thus making it "absolutely impossible for him to obtain documents that are necessary for (enjoyment of) his human rights". Being ill, the Applicant asked the Court to order the removal of the obstacles to medical and protective care.

9. The Applicant's arguments in support of his prayers for provisional measures are to be found in three documents, namely, the main Request in Application 004/2020 dated 1 July 2020 (76 Pages), the first request for provisional measures dated 20 July 2021 (89 pages plus annexes) and the second request dated 10 August 2021 (46 pages).

[1] These are the following Ruling for provisional measures: Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, Ruling on provisional measures of 5 May, 2020 - Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, in which the Court ordered "the Respondent State to take all necessary measures to effectively remove all administrative, judicial and political obstacles to the Applicant's candidacy in the forthcoming communal, municipal, district, town or village elections for the benefit of the Applicant"; Application No. 004/2020 - Houngue Eric Noudehouenou v. Republic of Benin – Ruling for Provisional measures of 6 May 2020, in which the Court ordered the Respondent State to "to stay the execution of the judgment of 25 July 2019 of the Court for Repression of Economic Crimes and Terrorism against the Applicant (...)"; Application No. 002/2021, Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin – Ruling for Provisional Measures of 29 March 2021 in which the Court ordered the Respondent State to "stay of execution in respect of Judgments of the Supreme Court of the Respondent State N°209/CA (COMON SA v. Ministry of Economy and Finance and two (2) others) and N°210/CA (Société JLR SA Unipersonnelle v. Ministry of Economy and Finance) of 5 November 2020, and N°231/CA (Société l'Elite SCI v. Ministry of Economy and Finance and two others) of 17 December 2020 until the decision of the Court on the merits";

[2] These are the following judgments: Application 059/2019 - XYZ v. Republic of Benin, Judgment of November 27, 2020, the operative part of which reads, inter alia, "Orders the Respondent State to take necessary measures to bring the composition of COS-LEPI into conformity with the provisions of Article 17(1) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy before any election "; Application 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin - Judgment of December 4, 2020, the operative part of which reads as follows: Orders the Respondent State to take all measures to repeal Law 28 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;; Orders the Respondent State to comply with the principle of national consensus enshrined in Article 10(2) of the ACDEG for any constitutional revision; Orders the Respondent State to take all measures to repeal Inter-Ministerial Decree 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019; 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 "; Application 010/2020 - XYZ v. Republic of Benin - Judgment of November 27, 2020 and Application 062/2019 - Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin. These two judgments have, in part, a similar operative part: "Orders the Respondent State to take all legislative and regulatory measures to guarantee the independence of the Constitutional Court, in particular with regard to the process for the renewal of their term of office (...), to take all measures to repeal Law No. 2019-40 of 1 November 2019 amending Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws, in particular Law 2019-43 of 15 November 2019 on the Electoral Code, and to comply with the principle of national consensus set forth in Article 10(2) of the ACDEG for all other constitutional revisions".

10. Despite the Applicant's detailed and precise allegations, the Court rejected this measure in a brief analysis which concludes:

> The Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. **However, the Applicant has not provided the Court with any evidence of his poor health other than mere assertions**. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

11. The Court then decides that there is no basis to order the measure requested. This reasoning shows that the Court undoubtedly did not take into consideration the Applicant's personal situation, the extensive submissions the Applicant has made, the reasons he has given for not submitting medical reports as well as his reliance on previous orders rendered by the Court.

12. Regarding his personal situation, the Applicant argues that in order to obtain the proof required by the Court, he would have had no other choice than to go to hospital. However, in doing so, he would have run the risk of being arrested since, by virtue of the arrest warrant, the Applicant remains a wanted person. Furthermore, he asserts that no doctor was willing to prepare a medical report for him because of fear of arrest for harbouring a wanted person and not surrendering him to the authorities. The applicant has also contended that he survived an assassination attempt on his life on 31 October 2018, three armed assailants while in the custody of the respondent State.

13. Therefore, it becomes pertinent to pose the following question: can the Court reasonably require a wanted person, who is in hiding, to produce evidence which requires him to travel and thus expose him to the risk of arrest in execution of an arrest warrant whose execution the Court had previously suspended? The answer is undoubtedly no. The other questions that arise are as follows: What proof was the Applicant required to produce to satisfy the Court that the order for medical access should be granted? Another related question is whether the Applicant has

explained why he could not submit any medical reports in support of his application?

14. Another related question is whether after the Applicant has submitted that under national law he requires an identity card to access medical treatment and official records, the Court can reasonably require him to produce those same records, when it is on record that he has been denied an identity card? To answer these questions, it is important to review the assertions made and the explanations/pieces of evidence provided in support of the requested measures.

b) Assertions Relating to Applicant's current Medical Condition

15. In his very detailed submissions on this issue of medical care, which are summarised very briefly in paragraphs 6, 7 and 8 of the Ruling of this Court, the Applicant has painted the picture of an extremely difficult and dangerous situation with his health continuously deteriorating in circumstances that make it impossible for him to receive urgently needed medical care. With the arrest warrant hanging over his head, he cannot receive needed medical attention; to obtain any medical care he needs an identity document, the right to which was taken away by "decision of the *Inter-Ministerial Order no. 023/MJUDC/SGM/DACPG/SA/023SGG19 of 22 July 2019, which prohibits the issuance of official documents (civil documents and other official documents) to the Applicant, in violation of his human rights protected by the Charter and the UDHR*".[3] Furthermore, he claims to require hospitalisation for closer observation and specialised medical care[4].

16. In his Request, the Applicant asserts that he is

> *at the terminal stage of the internal tissue growth, at which stage he is no longer able to sit properly and is writhing in pain, which is why, after consultation with a magnifying glass and several examinations by introducing medical instruments into the applicant's body, he was admitted to post-*

[3] The request of 20 July 2021, paragraph 67
[4] Ibid Para 61

*operative hospitalization on **October 30, 2021**[5] by Doctor-Professor OLORY-TOGBE, in charge of surgery at the CNHU-HKM, just before the attempt to assassinate him on October 31, 2018, which caused the suspension of this operation. Consequently, the Court can see the suffering that the Applicant has been enduring since 2018 to date because this surgical operation was suspended by the attempted assassination of the Applicant on 31 October 2018 and the Respondent's refusal to ensure the protection of his life and fundamental rights has forced the Applicant to continue to suffer*[6].

17. The Applicant further states that having regard to the obligations of the Respondent and the fact that "*the attempted murder of which the Applicant complains of occurred while he was illegally detained by the Respondent, he requested for effective protection of his fundamental rights on 12 June 2019"*, but no response was received or any action taken by the Respondent State.

18. The Applicant also outlines a number of intended medical interventions that cannot take place because of obstacles put up by the Respondent. First, in addition to the other illnesses for which the applicant is being treated and is awaiting surgery, he claims to be

*suffering from dermatological and neurological problems, as well as psychosomatic disorders and post-traumatic stress disorder with a depressive background, according to the doctors of the CNHU-HKM. **These ailments necessitated the hospitalization of the applicant for increased surveillance and special medical care (PEC) with physiotherapy** **(exhibit n°40 p. 11 to 13).**[7]*

19. Elaborating further on his medical condition, the Applicant contends that

*as a result of the acute right maxillary sinusitis detected in the CNHU-HKM by means of a scanner (**a copy of which will be submitted to the court after the obstacles to the access to the applicant's file have been removed**), the applicant has had to live in a dust-free environment, which the defendant deprives the applicant from November 2021, because by not executing the*

[5] This date must be a typo (perhaps should have been 2020) because the application was filed on 20 July 2021.
[6] The request of 20 July 2021, pparagraph 78
[7] Ibid paragraph 18

decisions of May 06, 2020, application no. 004/2020, September 25 and December 04, 2020, application no. 003/2020, the defendant puts the applicant in incapacity of access to his resources to maintain his healthy habitat, which will aggravate the cephalus and the condition of acute sinusitis diagnosed in him; as such a condition may relate to the brain, its worsening is of a ***life-threatening nature***.[8]

20. The Applicant states that

as long as the Respondent has not executed the order of 06 May 2020, application no. 004/2020, any attempt to obtain his medical file at the defendant's CNHU-HKM, would lead to the arbitrary deprivation of the applicant's liberty. ***Furthermore, since the Respondent did not execute the judgment of 04 December 2020, application no. 003/2020, the Applicant is deprived of obtaining his medical file because the communication of this file is protected, the Applicant has to prove his identity before getting a copy of his medical file,*** *while the Respondent has deprived him of civil or identity documents, despite the fact that the Court has ordered him to annul the Inter-Ministerial decree which forbids the Applicant to obtain the documents of the authority[9].*

21. The Applicant appeals to the Court by virtue of article 4 (2) of the ICCPR, article 3 (1) and article 27 (2) of the Protocol, and of its powers as protector of fundamental rights, to ensure that his continued "*submission to inhuman and degrading treatment with consequences as unpredictable as they are harmful to the health and life of the applicant",* are brought to an end "*otherwise the Court's function of protecting fundamental rights and providing emergency jurisdiction would be futile, since the Court would have allowed a violation of an imperative human rights norm to persist".*[10]

22. Indeed, the Applicant has alluded to the possibility of death if he does not receive medical attention. He states that "in the course of suffering from May 31, 2021, in the absence of being able to acquire the health care medicines, due to violation of the *judgment of December 4, 2020, application no. 003/2020, rendered by the*

[8]Ibid paragraph 107
[9] Ibid Para 67
[10] Ibid Para 90. The Applicant also relies on *"Article 4(2) and Article 7 of the ICCPR (prohibition of torture and other cruel, inhuman or degrading treatment or punishment,...)" and on the Court's* order of 17 April 2020, Request n° 062/2019, Sebastien G. AJAVON v. Benin, § 67.

*Court in favour of the Applicant, ….. **without health care, the irreparable prejudices go from the degradation of the state of health to the unpredictable situations, including death,** whereas these two situations are irreparable, it is an evidence that does not need demonstrations".*[11]

23. He also asserts that

> there is urgency because without health care and with the obstacles to the Applicant's right to health on the sole basis of the non-execution of the decisions of May 6, 2021, application no. 004/2020 and September 25, 2020, application no. 003/2020, **the Applicant runs the risk of death,** this is indisputable evidence, so that there is no need *to* detain or otherwise document this urgency[12].

c). The Applicant has explained the Failure to Submit Medical reports

24. The Applicant has explained that he cannot have access, even with due diligence, to any documentation relating to his medical condition. He asserts that his medical dossier is at the Respondent's CNHU-HKM , which he cannot access because he needs to go there in person, thus risking arrest and detention. Furthermore, to access those records, he needs to produce an identity card, which he has been denied in spite of a previous order of provisional measures by the Court. Apart from the probable deprivation of liberty, he fears for his life since the last time he was admitted at that hospital, there was an assassination attempt on him by 3 armed men who are still at large, and which forced the intended surgery to be abandoned.

25. In this regard, the Request of 20 July 2021, unequivocally states that:

> apart from the proof that he has provided in relation to his state of health, **the Applicant has not produced the entirety of his medical file because the Respondent obstructs it.** Indeed, the Respondent not having executed the decisions of the Court rendered in favor of the Applicant, **the latter cannot**

[11] The request of 20 July 2021, paragraph 96.
[12] ibid, paragraph 79. The Applicant has also alluded to the possibility of death in paragraphs 40, 102, 110 and 112 of the Request of 20 July 2020 and in the Addedum to the main Application filed on 28 February 2020.,

> **access his medical file with the CNHU-HKM of the Respondent, to produce it in the Court for several years."**[13] Furthermore, "concerning the drugs that the applicant may have acquired between November 2018 and April 2021 before being refused access to said drugs for default of identity documents that the Respondent did not issue to him in violation of the December 04, 2020 Ruling, request no. 00312020, the applicant did not produce proof of acquisition because this proof indicating the place of acquisition, will lead to his arbitrary deprivation of liberty, since the defendant has not complied with decisions of the Court rendered in favor of the applicant including the order of May 6, 2020.[14]

26. The Applicant also points out that by not executing the Courts order of May 6, 2020, in request no. 00412020 and the judgment of December 4, 2020, in request no 003/2020, the Respondent State has:

> arbitrarily put obstacles preventing the applicant to have access to his medical file with the CNHU-HKM, whereas this file is necessary for the doctors attending the applicant in order to allow them to treat the applicant taking into account all the history of his medical file in order to avoid medical errors.[15]

27. The Applicant also contends that the Respondent state has put him in the untenable choice of requiring him

> either to continue to suffer persecution with arbitrariness, inhuman and degrading treatment and the risk of death weighing on his life (the first untenable choice) or to exercise his right to flee persecution provided for in Article 14 of the UDHR, and thus endanger his vital prognosis for lack of adequate care and means of subsistence blocked by the CRIET (the second untenable choice).

28. The Applicant has also offered to supply these reports from the CNHU-HKM "**after the obstacles to the access to the applicant's file have been removed".**[16]

[13] The Request of 20 July 2021, paragraph 16.1
[14] Ibid Paragraph 16.2
[15] Ibid paragraph 65
[16] Ibid paragraph 103

d) Conclusion on Prayer for Access to Medical Care

29. From the forgoing summary, it is clear that the Applicant has not only provided a detailed exposition of his current medical condition, but also clearly explained away the reasons why he did not and cannot supply copies of medical reports. Indeed, he contends that the medical file is required by his doctors who are secretly treating him but he does not have access to it.

30. It is my considered opinion that the Applicant's reasoning as to why he cannot supply any documentary evidence is compelling. The detailed explanation by the Applicant cannot be considered as "mere assertions" as indicated in the ruling of the majority. The Court cannot simply reject the requested measures simply on the basis that evidence(medical reports) were not submitted. The Court is obliged to assess the reasons given by the Applicant, as to why he did not submit the reports, which surprisingly was not done. Furthermore, the Respondent has not challenged any of the Applicant's assertions or even attempted to demonstrate that the applicant has been lying or misrepresenting his situation in spite of having been afforded an opportunity to do so.

31. In these circumstances, why would the Court, choose to disbelieve the Applicant bearing in mind the importance accorded to the right to health in international law, due to the fact that it is related intimately to the enjoyment of several other rights?[17]. Without good health, so to speak, one is compromised in claiming other rights. To reason in reverse, if the Applicant had been in detention, it would have been the responsibility of the government to provide him with adequate medical care.

32. To this end, this responsibility persists even for persons not under detention except they have some leverage to choose medical facilities with greater latitude as compared to persons under detention, which is not the case here because the Applicant cannot access any medical facilities for the stated reasons. Furthermore, as the Applicant asserts in his request, **"in matters of the right to**

[17] 2 § 3 (c27) of the ICCPR, 11 of the UDHR, 2 and 13 (3) of the Charter

life, it is also necessary to act preventively in order to avoid subjecting the Applicant to a situation that may lead to his death for the sole reason of denial of health care"[18] due to the violation of the decisions of the Court**.**

33. In my view, the right to general health is implicated and the measure requested should have been granted.

34. The Applicant has also in addition to measures for himself, specifically requested the Court to *"enjoin the respondent to take all appropriate measures to remove all obstacles to the applicant's right to health, in particular, the obstacles to obtaining the applicant's file from the CNHU in full freedom and the obstacles to medical consultations, medical examinations to be carried out by the applicant, hospitalization, medical follow-up and the surgical operation for which he has been* ***awaiting surgery since 2018****,…….. and* ***also to ensure the effective protection of his doctors against prosecution and arrest within the meaning of articles 1 and 6 of the Charter."*** This aspect of the request which also strengthens the argument for grant of an order for protective medical care has not been addressed by the Court.

35. Finally, the Court has not addressed the link between **the current requests to Respondent's failure to implement previous decisions of the Court.** Even though the Applicant has specifically requested for this context to be taken into account, the Court has neither considered it nor pronounced itself on it .

36. The Applicant has asked the Court to consider the two requests in the light of their historical context particularly the impact of the previous orders of the Court that were not implemented, and which obliged the applicant to submit to the Court two other requests for interim measures. The Applicant further asserts that:

> The lack of medical records of the Applicant results only from the failure to execute the decisions of the Court on the part of the Respondent….. which is detrimental to his right *to* health and life[19].

[18] Paragraph 102
[19] The Request Para 40

37. Had the Court considered the context of this matter, I believe that it would have come to the conclusion that each and every aspect of the requests for provisional measures of 19 July 2021 and 10 August 2021, arise from implementation of the CRIET's Judgment of 25 July 2019, whose execution the Court had ordered be stayed. In these circumstances the Court would have had no difficulty in granting the measures sought.

II. On the measures to Unblock Applicant's Bank Accounts and Remove Obstacles to his Presence Before the Cotonou Court on 2 December 2021

38. In the Request for provisional measures of 10 August 2021, the Applicant submits that in execution of the CRIET's Judgment of 29 July 2019, all the accounts to which he is a signatory were blocked and arrest warrants issued against him, whereas by the Ruling on provisional measures of 6 May 2020, this Court had ordered a stay of execution of the said judgment. Even though the Applicant has specifically requested for this context to be taken into account, the Court has neither considered it nor pronounced itself on it.

39. In dealing with this request, the Court, after a very brief analysis recalls that it had issued an order on 6 May 2020 in the present Application No. 004/2020 to stay execution of the Judgment of 25 July 2019 of CRIET, which inter alia had blocked the Applicants bank accounts, and finds as follows:

> The Court observes that the CRIET Judgment issued an order to freeze the Applicant's bank accounts. **It further notes that the Applicant did not provide evidence that his bank account was blocked in execution of the CRIET judgment.**
>
> Regarding the obstacles to his presence in court as a result of the CRIET judgment, the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again.
>
> Accordingly, the Court dismisses this request.

40. The Court itself acknowledges in its ruling that the CRIET judgment of 25 July 2019 contained an order for freezing of the Applicant's bank accounts. The

question that must be asked is whether it is reasonable to assume that this order has not been accrued out since July 2019? What is the reason for disbelieving the Applicant even when the Respondent State has not challenged that assertion?

41. After a careful perusal of the two requests for provisional measures, it is clear that the conclusion by the majority that the Applicant did not provide evidence that his bank account was blocked in execution of the CRIET judgment has been reached only because the explanations given were ignored and not assessed.

42. In the Request of 10 August 2021, the Applicant has explained that "**CRIET ordered the banks to block the bank accounts of which the applicant is a signatory, as the applicant has already pointed out to the Court in his application and in paragraph 148 of the addendum of February 20, 2020."** Further, as a result of this blocking of the applicant's accounts, "**he and his family are exposed to irreparable damage and to unforeseeable situations of violation of their rights"** protected by articles 11 of the ICESCR, 23 of the UDHR, 4, 6, 7, 23 and 24 (1) of the ICCPR, 11 (1), 19 and 20 of the African Charter on the Rights and Welfare of the Child (ACRWC), 4 of the Protocol to the African Charter on the Rights of man and peoples relating to women's rights, 15 and 16 of the Charter (title b.) **even though this blocking of the applicant's accounts and assets is an arbitrary obstacle to the above human rights of the applicant and of his family**" [20].

43. The Applicant acknowledges that "**the Court may find that the applicant has not attached to this request for interim measures the statements of his bank accounts and other documents** because on the one hand, since the defendant has not executed the measures … rendered in favour of the applicant [by the Court], **the applicant cannot obtain a valid identity card whereas without a valid identity card the applicant cannot obtain from his banks his bank statements and other documents which the Court may need; but the Court can request its documents directly from the Banks; in this case, please the Court to notify the applicant so that he indicates to the Court all the Banks where he has accounts and assets**."

[20] Request of .. August paragraphs 15, 16, 17 and 17.1.

44. The Applicant cannot be clearer than this as to why he cannot supply evidence of freezing of his accounts. Apart from the fact that he has been in hiding, without any identity card he cannot access any official services.

45. The Applicant also contends that the other way in which he would have received the documents indicating the freezing of his accounts by CRIET was through the Bailiff.

46. Relying on the judgment of the ECOWAS Court of Justice in Mohammed Sambo Dasuki v. Nigeria, the Applicant contends that the

> The bailiff must do all due diligence to achieve the delivery of his exploit to the person of the person concerned and give him a copy. The judicial officers are required to deliver themselves or through their sworn clerks, the exploit and the copies of documents which they have been charged to serve by conforming to the texts in force.[21]

47. By this assertion, the Applicant is basically arguing that the Bailiff did not serve any documents on him, after freezing his accounts, presumably for failure to pay the fine of 1,277,995,474) CFA francs. Therefore, if the applicant could not access the document at the bank and did not receive it from the bailiff, presumably because he is in hiding, then he had no other known way of accessing it.

48. Regarding the statement by the Applicant that he will run out funds in November 2021, this must be assessed in its proper context. His overall submissions as a whole point to the fact that he is currently facing serious financial challenges but the situation will become critical in November 2021.

49. The Applicant has underlined that the Respondent state has "**endangered his vital prognosis for lack of adequate care and means of subsistence blocked by the CRIET.**"[22] He has also contended that "due to the non-execution of the decisions of May 6 and May 25, 2020, applications no. 004/2020 and no.

[21] Judgment n° ECW/CCJ/JUD/23/16, affaire COL. Mohammed Sambo Dasuki c. Nigeria, p.48
[22] Request of 20 July 2020, pparagraph 40

003/2020, the Respondent has financially impaired the Applicant's right to health, because **it is obvious that without financial means the petitioner cannot pay for doctors' fees, medical analyses, hospitalization, medicines, rehabilitation, nor pay for the surgical operation to eliminate the may in its final stage and its consequences, etc**[23]

50. With regard to the blocking of his accounts the Applicant has made the following assertions:

> **the Respondent has deprived him of sufficient financial means to meet his health care needs and his right to an adequate standard of living, as he has already reiterated in other pleadings (application no. 032/2020) and in the third complaint of the obstacles posed by the Respondent**[24]**.**
>
> the blocking of his accounts is arbitrary within the meaning of human rights and Articles 4 (m) of Constitutive Act and 4 (1) of ACDEG because blocking bank accounts of the applicant results from a denial of justice since the judgment of the CRIET is based on imaginary and untrue facts and the defendant has not been able to provide proof of the reality of his allegations neither during the internal proceedings nor before this Court, **whereas this arbitrary blocking creates irreparable damage to the rights of the applicant and his family**.
>
> Except for a miracle, the Applicant is deprived of the financial means to afford the food necessary for his health and life, which **entails an imminent violation of his right to an adequate standard of living, his right to life and health because of the non-execution of the decisions of the Court rendered in his favour.**[25]
>
> The Respondent has thus continuously deprived the applicant of the financial means to treat himself, whereas it is obvious that without financial means the applicant cannot treat himself, and the defendant has never provided him with a single CFA franc to purchase the health care medication provided by the doctors.[26]
>
> Consequently, faced with the requirement of the applicant's presence by the Cotonou Tribunal despite the presence of his counsel, there is urgency as long as the Respondent has not removed the obstacles mentioned in paragraphs

[23] Ibid paragraph 58
[24] Ibid paragraph 58
[25] Ibid paragraph 98
[26] Ibid Paragraph 52

120 to 126 above for the applicant's presence before the Cotonou Tribunal in full enjoyment of his rights to liberty protected by Articles 6 and 12 of the Charter[27].

51. Whether the critical need for access to his bank account is now or in December is irrelevant. The jurisprudence of the Court is to the effect that "urgency, consubstantial to extreme gravity, means "**a real and imminent risk that irreparable harm wilt be caused before it renders its final judgment**"[28]. Furthermore, the Court has also held there "there is an urgency whenever acts likely to cause irreparable harm can **"occur at any time" before the Court renders a final judgment in the case[29]**.

Court Hearing in December 2021

52. Regarding the hearing on 2 December 2021, the Applicant submits that, he cannot appear personally at a real estate legal proceeding pending before the Cotonou Court, where the said Court has ordered he be present at the hearing of 2 December 2021, failing which, he may irreversibly forfeit ownership of the said property.

53. On this issue, the Court has found in Paragraph 72 of its Ruling as follows:

> Regarding the obstacles to his presence in court **as a result of the CRIET judgment,** the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again.

54. First, I have not seen anything on record suggesting that the hearing in December arises from the CRIET judgment. The Applicant has contended in the second request of August 2021that it is a property dispute for which a hearing

[27] Ibid paragraphs 132

[28] See Application 004/2020, Houngue Eric Noudehouenou v Benin (Ruling of 6 May 2020), § 37& 38; See also. ICJ, implementation of the Convention for the Prevention and Punishment of the Crime of Genocide Gambia v Myanmar, 23 January 2020, § 65;

[29] Ibid § 38;

took place in the Cotonou Court for which he had not been given prior notice. He states as follows:

> On the second hand, concerning the urgency, the irreparable damage and the interests of justice…it becomes irreparable damage from December 2, 2021 because it is on July 15, 2021 that the Court of Cotonou required the physical presence of the applicant under penalty of arbitrarily depriving him of his right to property then confirmed by the applicant's land title (Exhibit 121), the acts of the Authority presented to the Beninese judge (Exhibits 122 to 123) since Article 146 of the Land Code provides that the Applicant's Land Title is final and unassailable.[30]

55. In view of the foregoing, the Court ought to have granted the prayer for unblocking the Applicants Bank Accounts..
56. With regard to the attendance at the Cotonou Court hearing hearing on 2 December 2021, the Court should have ordered removal of all obstacles to his presence before the Cotonou Court. Furthermore, in the alternative, the Court could also have reiterated its previous ruling and discharged the Applicant from any obligation to attend the Cotonou Court hearing on 2 December 2021, until the respondent State has implemented its previous decisions.,.

Conclusion on the measures sought.

57. The failure of the Respondent State to implement the previous decision sof the Court, have put the Applicant in his current untenable position, where, on the one hand, he is sick and cannot receive treatment and risks arrest and detention if he attends Court, and, on the other hand, risks losing his property if he does not attend Court. Needless to say, he is only in this situation because of the cations or inactions of the Respondent State. In such circumstances, I believe that had the Court seriously considered the evidence submitted and the assertions made by the Applicant, it would have granted the orders sought for access to medical care, for unblocking his bank accounts and for removing obstacles to his attendance at the Cotonou Court hearing on 2 December 2021.

[30] Paragraph 129

Signed:

Ben KIOKO, Judge;

Done at Dar es Salaam, this Twenty Second Day of November in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.

DECLARATION OF JUDGE TUJILANE ROSE CHIZUMILA

HOUNGUE ERIC NOUDEHOUENOU V. REPUBLIC OF BENIN

APPLICATION Nº 004/2020

Pursuant to Rule 70(3) of the Rules of the Court, I hereby declare that I disagree with the majority ruling of the Court that "Dismisses the requests for provisional measures relating to obstacles to medical care and protection, to unfreeze the Applicant's bank account and to remove obstacles to his presence before the Cotonou Court. "

1. In this regard, I agree with the dissenting opinion expressed by Judge Ben Kioko concerning the Court's dismissal of the above-mentioned requests.

2. In my view, the Court's reasoning for dismissing the requests is unpersuasive and fails to take into consideration some important elements of the case.

3. In the Request of 19 July 2021, the Applicant prayed for the following provisional measures:

> Order the Respondent State to take all appropriate measures to remove all obstacles to his right to health, in particular the obstacles to obtaining his file from the CNHU in complete freedom and all obstacles to medical consultations, medical examinations, hospitalisation, medical follow-up and the surgery he has been waiting for since 2018, and secondly to ensure the effective protection of his doctors against any prosecution or arrest, failing that, to provide him with the means and a host country where he will receive proper medical unimpeded by the Respondent State.

4. In its ruling,

"the Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. However, the Applicant has not provided the Court with any evidence of his poor health other than mere assertions. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

> The Court recalls that urgency, consubstantial with extreme gravity, means a "real and imminent risk that irreparable harm will be caused before it renders its final judgment." The court emphasizes that the risk in question must be real, which excludes the purely hypothetical risk and justifies the need to repair it immediately. The Court therefore considers that there is no basis to order the measure requested."

5. I do not agree with this reasoning which did not take into consideration the Applicant's extensive and detailed submissions on this issue, in which he explained clearly and step by step, why he cannot receive the needed medical attention as he has an arrest warrant hanging over his head; the connection between his inability to obtain any medical care and the fact that he does not have an identity document, a right that was taken away by "the decision of the *Inter-Ministerial Order no. 023/MJUDC/SGM/DACPG/SA/023SGG19 of 22 July 2019, which prohibits the issuance of official documents (civil documents and other official documents) to the Applicant, in violation of his human rights protected by the Charter and the UDHR"*.[1]
Furthermore, 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 considers necessary."

6. With reference to Article 27(2) of the Protocol, the Court notes that it has the duty to decide, in each individual case whether, in the light of the particular circumstances of the case, it should exercise the jurisdiction conferred on it by the above provision.

7. With regard to irreparable harm, the Court considers that there must exist a "reasonable probability of materialization" having regard to the context and the personal situation of the applicant [1]

[1] The request of 20 July 2021, paragraph 67

7. In light of the foregoing, I am of the strong view that the requests for provisional measures based on the three requirements of Article 27(2) (extreme gravity, urgency and irreparable harm) have been met and were amply highlighted by the Applicant who devoted extensive parts of his request to them. The finding that the detailed explanations by the Applicant are "mere assertions" as indicated in the ruling of the majority, does not reflect the facts and the jurisprudence cited by the Applicant.

8. As Judge Kioko cites all these facts in his dissenting opinion, it is not necessary for me to go over them again. With this dissenting opinion, I am only expressing my dissent, endorsing and supporting the opinion of my distinguished colleague.

Signed:

Judge Tujilane Rose Chizumila

Done at Arusha, this 17th Day of December in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.