

004/11_PM African Commission on Human and Peoples' Rights v. Libya (Provisional Measures)

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE MATTER OF
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
V.
GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

APPLICATION No. 004/2011

ORDER FOR PROVISIONAL MEASURES

The Court composed of: Gérard NIYUNGEKO, President; Sophia A.B. AKUFFO, Vice President; Jean MUTSINZI, Bernard M. NGOEPE, Modibo T. GUINDO, Fatsah OUGUERGOUZ, Joseph N. MULENGA, Augustino S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON and Sylvain ORE - Judges; and Robert ENO - Acting Registrar,

In the matter of:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
v.

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

After deliberations,

Having regard to the application dated the 3rd of March 2011, received at the Registry of the Court on 16 March 2011, by the African Commission on Human and Peoples' Rights (hereinafter referred to as the Commission), instituting proceedings against the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as Libya), for serious and massive violations of human rights guaranteed under the African Charter on Human and Peoples' Rights (hereinafter referred to as the Charter);

Having regard to Article 27 (2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the Protocol) and Rule 51 of the Rules of Court;

Makes the following Order:

1. Whereas, in its application, the Commission submits that it received successive complaints against Libya, during its 9th Extraordinary Session held in Banjul (The Gambia) from the 23rd of February to the 3rd of March 2011;
2. Whereas, the Commission submits that the complaints allege:

- that following the detention of an opposition lawyer, peaceful demonstrations took place on the 16th of February 2011 in the Eastern Libyan city of Benghazi,

- that on the 19th of February 2011, there were other demonstrations in Benghazi, Al Baida, Ajdabiya, Zayiwa and Derna, which were violently suppressed by security forces who opened fire at random on the

demonstrators killing and injuring many people,

- that hospital sources reported that on the 20th of February 2011 they received individuals who had died or been injured with bullet wounds in the chest, neck and head,

- that Libyan security forces engaged in excessive use of heavy weapons and machine guns against the population, including targeted aerial bombardment and all types of attacks, and

- that these amount to serious violations of the right to life and to the integrity of persons, freedom of expression, demonstration and assembly.

3. Whereas, the Commission concludes that these actions amount to serious and widespread violations of the rights enshrined in Articles 1, 2, 4, 5, 9, 11, 12, 13 and 23 of the Charter;

4. Whereas, on the 21st of March 2011, the Registry of the Court acknowledged receipt of the application, in accordance with Rule 34(1) of the Rules of Court;

5. Whereas, on the 22nd of March 2011, the Registry forwarded copies of the application to Libya, in accordance with Rule 35 (2) (a) of the Rules of Court, and invited Libya to indicate, within thirty (30) days of receipt of the application, the names and addresses of its representatives, in accordance with Rule 35 (4) (a), whereas the Registry further invited Libya to respond to the application within sixty (60) days, in accordance with Rule 37 of the Rules;

6. Whereas, by letter dated the 22nd of March 2011, the Registry informed the Chairperson of the African Union Commission, and through him, the Executive Council of the African Union, and all the other States Parties to the Protocol, of the filing of the application, in accordance with Rule 35(3) of the Rules;

7. Whereas, by letter dated the 23rd of March 2011, the Registry forwarded copies of the application to the complainants that seized the Commission, in accordance with Rule 35 (2)(e) of the Rules;

8. Whereas, by letter dated the 23rd of March 2011, the Registry informed the parties to the application that, given the extreme gravity and urgency of the matter, the Court might, on its own accord, and in accordance with Article 27(2) of the Protocol and Rule 51(1) of its Rules, issue provisional measures;

9. Whereas in its application, the Commission did not request the Court to order provisional measures;

10. Whereas, however, under Article 27 (2) of the Protocol and Rule 51 (1) of the Rules, the Court is empowered to order provisional measures *proprio motu* "in cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons" and "Which it deems necessary to adopt in the interest of the parties or of justice";

11. Whereas, it is for the Court to decide in each situation if, in the light of the particular circumstances, it should make use of the power provided for by the aforementioned provisions;

12. Whereas, given the particular circumstances of the case, the Court has decided to invoke its powers under these provisions;

13. Whereas, in the present situation where there is an imminent risk of loss of human life and in view of the ongoing conflict in Libya that makes it difficult to serve the application timeously on the Respondent and to arrange a hearing accordingly, the Court decided to make an order for provisional measures without written pleadings or oral hearings;

14. Whereas, in dealing with an application, the Court has to ascertain that it has jurisdiction under Articles 3 and 5 of the Protocol;

15. Whereas, however, before ordering provisional measures, the Court need not finally satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction;

16. Whereas, Article 3 (1) of the Protocol provides that 'the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned';

17. Whereas, Libya ratified the Charter on the 19th of July 1986 which came into force on the 21st of October 1986; whereas, Libya ratified the Protocol on the 19th of November 2003 which came into force on the 25th of January 2004; and Libya is a party to both instruments;

18. Whereas, Article 5 (1) (a) of the Protocol lists the Commission as one of the entities entitled to submit cases to the Court;

19. Whereas, in the light of the foregoing, the Court has satisfied itself that, *prima facie*, it has jurisdiction to deal with the application;

20. Whereas, it appears from the application that there exists a situation of extreme gravity and urgency, as well as a risk of irreparable harm to persons who are the subject of the application;

21. Whereas, the application alleges that international organizations, mentioned below, both universal and regional, to which Libya is a member, have considered the situation prevailing in Libya:

- On the 23rd of February 2011, the Peace and Security Council of the African Union "express[ed] deep concern with the situation in the Great Socialist People's Libyan Arab Jamahiriya and strongly condemn[ed] the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law, which continues to contribute to the loss of human life and the destruction of property";

- On the 21st of February 2011, the Secretary General of the Arab League called for an end to violence, stating that the demands of Arab people for change are legitimate and the Arab League has suspended Libya;

- The United Nations Security Council in Resolution 1970 (2011) adopted on the 26th of February 2011, denounced 'the gross and systematic violations of human rights, including, the repression of peaceful demonstrators', noting further that 'the systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity'; and decided to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;

22. Whereas, in the opinion of the Court, there is therefore a situation of extreme gravity and urgency, as well as a risk of irreparable harm to persons who are the subject of the application, in particular, in relation to the rights to life and to physical integrity of persons as guaranteed in the Charter;

23. Whereas, in the light of the foregoing, the Court finds that the circumstances require it to order, as a matter of great urgency and without any proceedings, provisional measures, in accordance with Article 27 (2) of the Protocol and Rule 51 of its Rules;

24. Whereas, measures ordered by the Court would necessarily be provisional in nature and would not in any way prejudice the findings the Court might make on its jurisdiction, the admissibility of the application and the merits of the case;

25. For these reasons, THE COURT, unanimously orders the following provisional measures:

1) The Great Socialist People's Libyan Arab Jamahiriya must immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party.

2) The Great Socialist People's Libyan Arab Jamahiriya must report to the Court within a period of fifteen (15) days from the date of receipt of the Order, on the measures taken to implement this Order.

Done at Arusha, this twenty fifth day of March in the year Two Thousand and Eleven, in Arabic, English and French, the English text being authoritative.

Signed:

Gérard NIYUNGEKO, President

Sophia A.B. AKUFFO, Vice-President

Jean MUTSINZI, Judge

Bernard M. NGOEPE, Judge

Judge Modibo T. GUINDO, Judge

Fatsah OUGUERGOUZ, Judge

Joseph N. MULENGA, Judge

Duncan TAMBALA, Judge

Elsie N. THOMPSON, Judge

Sylvain ORÉ, Judge and

Robert ENO, Acting Registrar