


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THE MATTER OF  
MOULAYE BABA HAÏDARA AND OTHERS**

**V.**

**REPUBLIC OF MALI**

**APPLICATION NO. 009/2024**

**RULING  
(PROVISIONAL MEASURES)**

**29 OCTOBER 2024**



**The Court composed of:** Imani D. ABOUD, President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA - Judges; and Robert ENO, Registrar.

Pursuant to Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as 'the Protocol') and Rule 9(2) of the Rules of Court (hereinafter referred to as 'the Rules'), Judge Modibo SACKO, Vice-President of the Court, and a national of Mali, did not hear the Application.

In the Matter of:

Moulaye Baba HAÏDARA, Mahamoud Mohamed MANGANE and Amadou TOGOLA

*Represented by:*

- i. Barrister Mariam DIAWARA, member of the Malian Bar;
- ii. Barrister Brown OSARENKHOE, member of the Lagos Bar in Nigeria; and
- iii. Barrister Philippe ZADI, Advocate residing in France.

Versus

REPUBLIC OF MALI

*Unrepresented*

*After deliberation,*

*Renders this Ruling:*

## **I. THE PARTIES**

1. Moulaye Baba Haïdara, Mahamoud Mohamed Mangane and Amadou Togola (hereinafter referred to as “the Applicants”) are all Malian nationals and members of Parti Solidarité Africaine pour la Démocratie et l'Indépendance (SADI), a Malian political party. They are challenging the reasons for their arrest and conditions of detention.
2. The Application is filed against the Republic of Mali (hereinafter referred to as “the Respondent State”). It 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 on 24 January 2004. On 19 February 2010, the Respondent State deposited the Declaration under Article 34 (6) of the Protocol (hereinafter referred to as “the Declaration”), by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples’ Rights.

## **II. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. In their application, the Applicants allege that they were arrested on 12 June 2023 and remanded in custody for four months in the premises of the National Bureau of State Security (hereinafter referred to as “the ANSE”) where they claim to have been tortured by ANSE operatives through flogging, scarification and especially, electrocution of the testicles of Mahamoud Mohamed Mangane, one of the Applicants.

4. On 10 July 2023, the Applicants lodged a complaint with the State Prosecutor at the Bamako District Commune VI Court of First Instance and requested that the ANSE operatives, who arrested and detained them be tried and punished. The State Prosecutor however shelved their complaint.
5. The Applicants affirm that the investigating Magistrate later charged them with criminal conspiracy, breach of internal and external State security, violation of national unity and the credibility of the state, plotting against the government, and being in possession of stolen property, and remanded them in custody on 10 October 2023.
6. The Applicants aver that on 13 November 2023, they petitioned the investigating Magistrate seeking annulment of the proceedings against them and their release. The said request was dismissed on 29 November 2023. On 6 February 2024, the Indictment Chamber of the Court of Appeal of Bamako confirmed the investigating Magistrate's ruling dismissing the Applicants' submission of no case and request for their release. On 8 February 2024, the Applicants lodged a cassation appeal with the Supreme Court against the decision of the Court of Appeal.

## **B. Alleged Violations**

7. The Applicants allege the violation of the following rights:
  - A. The right to freedom and to security as well as the right not to be arbitrarily detained, guaranteed under Article 6 of the Charter, Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR); Article 9 of the Universal Declaration of Human Rights (UDHR);
  - B. The right to the prohibition of torture, inhuman and degrading treatment provided under Article 5 of the UDHR, and Articles 4 and 5 of the Charter;

- C. The right to physical and body integrity guaranteed under Articles 4 and 5 of the Charter;
- D. The right to freedom of opinion and of expression guaranteed under Article 9 (2) of the Charter and Article 19 of the ICCPR; and
- E. The right to be heard and to a fair trial provided for under Articles 7 (1) of the Charter, 14 of the ICCPR, 8 and 10 of the UDHR.

### **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

- 8. The Application dated 24 July 2024 was received at the Registry of the Court on 30 July 2024. On 14 August 2024, the Applicants filed a request for provisional measures, dated 29 July 2024.
- 9. On 28 August 2024, the Application and the request for provisional measures were served on the Respondent State, with a request to respond to the request for provisional measures within 15 days and to file its Response to the Application within 90 days.
- 10. At the expiry of the time-limit, the Respondent State failed to file its response to the request for provisional measures.

### **IV. PRAYERS OF THE APPLICANTS**

- 11. The Applicants prayed the Court to:
  - i) Declare that it has jurisdiction to hear the Application and declare it admissible;
  - ii) Find and declare that the violations alleged by the Applicants are founded;
  - iii) Vacate all charges and proceedings against the Applicants and release them immediately;

- iv) Order the Respondent State to conduct judicial investigations against the ANSE operatives, as well as those involved in the acts of torture, inhuman and degrading treatment and in the violation of their physical and mental integrity;
  - v) Find that Articles 24,37,38,41,42,45,46,58, and 175 of the Malian Penal Code are inconsistent with Article 19 of the ICCPR, Article 11 of the Charter and Article 19 of the UDHR;
  - vi) Order the Respondent State to pay each Applicant the sum of 100 Million CFA Francs for all damages suffered;
  - vii) Order the Respondent state to report to the Court on the implementation of the Decision within three (3) months;
  - viii) Order the Respondent state to bear all costs.
12. In the request for provisional measures, the Applicants pray the Court to order the Respondent State to suspend the detention order issued against them on 7 October 2023, in order to allow them access proper medical treatment and preserve their right to life and to the presumption of innocence.

## **V. *PRIMA FACIE JURISDICTION***

13. The Applicants allege that this Court has jurisdiction to order the provisional measures requested insofar as in their Application, they allege violation of their rights guaranteed by the Charter, the UDHR and the ICCPR.<sup>1</sup>
14. The Respondent State did not file any Response.

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15. Article 3(1) of the Protocol provides that:

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<sup>1</sup> The Respondent State became a party to the ICCPR on 16 July 1974.

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the states concerned.

16. As regards provisional measures however, the Court does not need to ensure that it has jurisdiction to hear the merits of the case but that it has *prima facie* jurisdiction.<sup>2</sup>
17. In the present case, the Applicants allege violation of Articles 4, 5 and 6 of the Charter, Articles 9, 14 and 19 of the ICCPR and Articles 5, 9, 8, 10 of the UDHR. Pursuant to Article 3(1) of the Protocol, the Court has jurisdiction to interpret and apply these three instruments.
18. The Court notes, as stated in paragraph 2 of this Ruling, that the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration.
19. Based on the foregoing, the Court finds that it has *prima facie* jurisdiction to hear the request for provisional measures.

## VI. PROVISIONAL MEASURES REQUESTED

20. The Applicants pray the Court to grant the following provisional measures:

- A. Order the Respondent state to suspend the detention warrants issued against the Applicants on 7 October 2023 to enable them undergo proper medical

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<sup>2</sup> *Adama Diarra alias Vieux Blen v. Republic of Mali* (provisional measures) (29 March 2021) 5 AfCLR 124, § 17; *Harouna Dicko and 4 Others v. Burkina Faso*, (provisional measures) (20 November 2020) 4 AfCLR 784, § 14; *Guillaume Kigbafori Soro and others v. Republic of Côte d'Ivoire* (provisional measures) (22 April 2020) 4 AfCLR 516, § 17; *Babarou Bocoum v. Republic of Mali*, (provisional measures) (23 October 2020) 4 AfCLR 773, § 14.

treatment and to preserve their right to life and to the presumption of innocence.

- B. Order the Respondent state to report on the measures taken in respect of the said suspension within fifteen days from the notification of the Ruling on provisional measures.

21. The Respondent State did not file any Response.

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22. The Court notes that Article 27(2) of the Protocol provides that:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

23. The Court notes that the provisions of Article 27(2) of the Protocol are restated in Rule 59(1) of the Rules, which provides as follows:

Pursuant to Article 27(2) of the Protocol, the Court may, at the request of a party, or on its own accord, in case of extreme gravity and urgency and where necessary to avoid irreparable harm to persons, adopt such provisional measures as it deems necessary, pending determination of the main application.

24. It emerges from the above provisions that the Court has discretionary powers entitling it to decide on a case-by-case basis, whether or not the Application filed before it requires it to issue provisional measures.

25. The Court has also established that in determining provisional measures, it is mindful of the above principles and takes into account, in particular, the fact



that provisional measures are of a preventive nature and are granted only if one of the parties meets all the requirements.<sup>3</sup>

26. The Court further underscores that the condition of urgency or extreme gravity and irreparable harm are cumulative, so that if one is not met, the provisional measures sought cannot be granted.

#### **A. Urgency and extreme gravity**

27. The Court recalls its jurisprudence that urgency, which is consubstantial with extreme gravity, means that “a real and imminent probability that irreparable harm will occur before its final decision”.<sup>4</sup> The Court underscores that the risk in question must be real, which excludes hypothetical risks and explains the need to deal with it immediately.<sup>5</sup> As regards irreparable harm, the Court holds that there must be “a reasonable probability of it occurring” having regard to the context and the personal situation of the Applicant.<sup>6</sup>
28. In the instant case, the Applicants allege torture during their detention at ANSE, leading to serious psychological and physical suffering requiring urgent and specialised medical treatment without which their survival would be in jeopardy.
29. The Court notes that the Applicants’ allegations are corroborated by medical certificates issued by the medical doctor of the prison which confirm “the precarious state of health of the Applicants as well as the inability of the health

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<sup>3</sup> Ibid, § 34.

<sup>4</sup> *Moadh Kheriji Ghannouchi and others v Republic of Tunisia*, AfCHPR, Application No. 004/2023, (provisional measures) (28 August 2023) § 34; *Adélakoun and others v. Republic of Benin*, (provisional measures) (25 June 2021) 5 AfCLR 181, § 24; *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin*, (provisional measures) (17 April 2020) 4 AfCLR 123, § 61.

<sup>5</sup> Ibid, *Moadh Kheriji Ghannouchi and others v. Republic of Tunisia* § 34.

<sup>6</sup> Ibid, § 37.

centre to provide them with appropriate health coverage” The Court thus finds that the Applicants’ situation is one of extreme gravity.

30. On the basis of this observation, the Court finds that the conditions of urgency and extreme gravity are met and that it is necessary to take urgent measures enabling the Applicants to consult specialist doctors and to access the best medical care required for their conditions.<sup>7</sup>

## **B. Irreparable Harm**

31. The Court further notes that the Applicants aver that they were subjected to bodily harm, flogging and electrocution during their detention by the ANSE, which requires adequate medical care that the medical services of the prison cannot provide. In support of their allegations, the Applicants attached to their Application photographs showing hematomas, scars and oedemas on their bodies.
32. It further emerges from the record that on 24 October 2023, 15 November 2023 and 27 March 2024, the medical doctor of the Bamako Central prison received Mahamoudou Mangane, Amadou Togola and Moulaye Baba Haïdara for consultations and signed a medical certificate indicating that the state of health of the three Applicants required that they be afforded regular and adequate check-up in specialised hospitals to ensure better treatment.<sup>8</sup>
33. The Court therefore finds that the risk faced by the Applicants is real and not hypothetical, in particular, with regard to their health. Accordingly, the risk of irreparable harm occurring is established.

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<sup>7</sup> See General Comment N°14, The right to the highest attainable standard of health, 11/08/2000, E/C.12/2000/4. § 12(d).

<sup>8</sup> See the medical certificates issued by the medical doctor of the Bamako Central Prison.

34. Based on the foregoing, the Court holds that as regards their health needs and access to adequate specialised health services, there is extreme gravity and urgency to avoid the occurrence of unexpected and irreparable harm.
35. Furthermore, the Court notes that the Applicants, who are represented by three Counsel before the domestic courts, have provided guarantees to appear before the said courts.
36. Accordingly, the Court orders the Respondent State to suspend the detention warrants issued against the Applicants, pending consideration of the case on the merits.
37. The Court notes that for the avoidance of doubt, this ruling is provisional in nature and does not in any way prejudge the decision of the Court on jurisdiction, admissibility and the merits of the case.

## **VII. OPERATIVE PART**

38. For these reasons;


THE COURT,


*Unanimously,*

- i. *Orders* the Respondent State to take all necessary measures to suspend the detention of the Applicants to enable them access medical attention, till the completion of their treatment;

- ii. *Orders* the Respondent State to report on measures taken to implement this Ruling within fifteen (15) days from the date of notification.

Signed:

Imani D. ABOUD, President; 

and Robert ENO, Registrar. 

Done in Arusha, this Twenty Ninth Day of the month of October in the year Two Thousand and Twenty-Four, in English and French, the French text being authoritative.

