

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

THE MATTER OF

MOADH KHERIJI GHANNOUCHI AND OTHERS

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 004/2023

**ORDER
(PROVISIONAL MEASURES)**

28 AUGUST 2023



The Court composed of: Imani D. ABOUD, President; Modibo SACKO, Vice President; Ben KIOKO, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Denis D. ADJEI, Judges; and Robert ENO, Registrar.

In accordance with 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"), Justice Rafaâ BEN ACHOUR, member of the Court, and a national of Tunisia, did not hear the Application.

In the Matter of:

Moadh Kheriji GHANNOUCHI, Saida AKREMI, Elyes CHAOUACHI, Seifeddine FERJANI and Seifeddine BOUZAYENE

Represented by:

Rodney Thomas Dixon KS, Temple Garden Chambers

Versus

REPUBLIC OF TUNISIA

Represented by:

State Litigation Officer, Ministry of State and Land Affairs

After deliberations,

Renders this Order:

I. THE PARTIES

1. Moadh Kheriji GHANNOUCHI, Saida AKREMI, Elyes CHAOUACHI, Seifeddine FERJANI and Seifeddine BOUZAYENE (hereinafter referred to individually as “the First Applicant”, “the Second Applicant”, “the Third Applicant”, “the Fourth Applicant” and “the Fifth Applicant” respectively; or “the Applicants” jointly) are all Tunisian nationals. The Applicants are family relations of Rached Ghannouchi, Noureddine Bhiri, Ghazi Chaouachi, Said Ferjani, who are all imprisoned, and Ridha Bouzayene, who died during the demonstrations of 14 January 2022 in the Republic of Tunisia. They file the present Application for provisional measures as ancillary to the main Application in which they allege the violation of their rights under Articles 1, 2, 4, 5, 6, 7, 9, 10, 11, 13, 16 and 26 of the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) as well as corresponding provisions under both the International Covenant on Civil and Political Rights (hereinafter referred to as “the ICCPR”)¹ and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “the ICESCR”).²
2. The Application is filed against the Republic of Tunisia (hereinafter referred to as “the Respondent State”), which became a Party to the Charter on 21 October 1986 and to the Protocol on 5 October 2007. Furthermore, on 2 June 2017, the Respondent State deposited with the Chairperson of the African Union Commission the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”) through which it accepted

¹ The Respondent State became a party to the International Covenant on Civil and Political Rights on 18 March 1969.

² The Respondent State became a party to International Covenant on Economic, Social and Cultural Rights on 18 March 1969.

the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations (hereinafter referred to as “NGOs”).

II. SUBJECT OF THE APPLICATION

3. It emerges from the main Application that the First, Second, Third and Fourth Applicants are all relatives of politicians who are currently under detention within the Respondent State in relation to several alleged criminal offences.³ The Fifth Applicant is the son of an opposition politician who died during a public demonstration that occurred at the beginning of 2022.⁴ While a party to the main action, the Fifth Applicant has not made any prayers in respect of the request for provisional measures.
4. The Applicants aver that following a series of presidential decrees issued from July to October 2021, the President of the Respondent State, on 30 March 2022, dissolved Parliament and amended the law of the Independent Higher Electoral Commission. According to the Applicants, the President also called a referendum on the constitution on 25 July 2022. The new Constitution, it is alleged, was approved despite the low turnout in the referendum. The Applicants further aver that the Constitutional Court, required to be established under the Constitution, was, however, not established.
5. Specifically in connection with their detained relatives, the First Applicant alleges that his father, Rached Ghannouchi, was convicted by the Tunis Court of First Instance on 15 May 2023 on charges of glorifying terrorism. It is further

³ Moadh Kheriji Ghannouchi is the son of Rached Ghannouchi, the leader of the Ennahda Party, the largest party in the Respondent State; Saida Akremi is the wife of Nouredine Bhiri who is the Vice President of Ennahda Party and former Minister of Justice; Elyes Chaouachi is the son of Ghazi Chaouachi who is the Secretary General of the Tayyar Party; Seifeddine Ferjani is the son of Said Ferjani a member of Parliament and a leader in Ennahda Party.

⁴ Seifeddine Bouzayene is the son of Ridha Bouzayene a “well known” member of the Ennahda Party.

alleged that he was sentenced, in absentia, to one (1) year in prison, three (3) years under administrative control and a fine of one thousand (1,000) dinars.

6. The Second Applicant alleges that her husband, Nouredine Bhiri, was "abduct[ed] [. . .] and tak[en] [. . .] to an unknown destination after " a "siege and raid" on his home and the "sever[e] assaul[t] [of] his wife and children". The detention, it is further alleged, is based on a statement made by Mr Bhiri in an event organized by the National Salvation Front on 8 January 2023, in the Tunis suburb of Mnihla and the charge against him is "of seeking to change the nature of governance."
7. The Third Applicant alleges that his father, Ghazi Chaouachi, "was arrested on 25 February 2023 and is charged with conspiracy against state security and spreading false news".
8. The Fourth Applicant alleges that no charges have been laid against his father, Said Ferjani, although they understand that his detention is "linked to the Instalingo media company which has been accused of espionage and conspiracy against the state".
9. As for the Fifth Applicant, he alleges that his father, Ridha Bouzayene, "attended a protest against the Government of the Respondent State on 14 January 2022, and disappeared. Five days later, the Ennahdha Party was notified that he had died in hospital from injuries inflicted by police."
10. The Applicants add that the above-mentioned incidents took place against the "background of statements by the President of the Respondent State, which have gone so far as to describe detainees as terrorists and to condemn judges who acquit detainees as their accomplices".

III. ALLEGED VIOLATIONS

11. In their main Application, the Applicants allege a violation of the rights of their detained family members as follows:

- i. Article 1 of the Charter and Article 2 of the ICCPR “due to the other violations of the Charter and because the Constitutional Court is not operational, the independence of lawyers and the judiciary has not been respected, and Mr. Bouzayene's death has not been effectively investigated or punished;”
- ii. Article 2 of the Charter and Article 2 of the ICCPR because “the pattern of violations reflected in the detention and prosecution of the politicians related to the First through Fourth Applicants, and the death and the failure to investigate the death of the father of the Fifth Applicant, is evidence that the Respondent State is drawing distinctions on the basis of political opinion that affect enjoyment of the rights guaranteed by the Charter”;
- iii. Article 4 of the Charter and Article 6 of the ICCPR since the “life of Mr. Bouzayene has not been afforded respect: it appears that he was arbitrarily deprived of his life”;
- iv. Article 5 of the Charter and Articles 7 and 10 of the ICCPR because “the dignity of the Applicants' relatives has not been respected and the Respondent State has not safeguarded adequately against torture and cruel, inhuman, or degrading treatment or punishment”;
- v. Article 6 of the Charter and Article 9 of the ICCPR because the detention of the Applicants' relatives did not follow from arrests that were taken “pursuant to a warrant, on reasonable suspicion or for probable cause, and adequate reasons were not given”;
- vi. Articles 7 of the Charter and Articles 14 and 15 of the ICCPR due to the absence of an operational Constitutional Court, the lack of respect for judicial independence and impeding access to lawyers;

- vii. Article 9 of the Charter and Article 19 of the ICCPR “to the extent that the arrests, detention, prosecutions, and convictions of which the Applicants complain are in response to political speech”;
- viii. Article 10 of the Charter and Article 22 of the ICCPR “insofar as the relatives of the Applicants were targeted by the Respondent State due to their membership of the National Salvation Front or parties associated with it”;
- ix. Article 11 of the Charter and Article 21 of the ICCPR due to the killing of the father of the Fifth Applicant;
- x. Article 13 of the Charter and Article 25 of the ICCPR due to the adoption of legislation in contravention of the Constitution of 2014, including that promulgating the Constitution of 2022, inhibition of the right of the Applicants' relatives to participate freely in the governance of the Respondent State;
- xi. Article 16 of the Charter and Article 12 of the ICESCR because the lack of access to doctors of choice by the detainees is “preventing them from enjoying their best attainable state of physical and mental health”; and
- xii. Article 26 of the Charter because the steps taken by the President of the Respondent State undermine the independence of the courts.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

12. On the 1 June 2023, the Registry received the main Application together with the request for provisional measures. On 2 June 2023, the Registry acknowledged receipt of the Application and notified the Applicants of its registration.

13. On 8 June 2023, the Application was served on the Respondent State which was granted ten (10) days to respond to the request for provisional measures; thirty (30) days to file its list of representatives; and ninety (90) days to respond to the main Application.
14. On 27 June 2023 the Respondent State requested for an extension of time to file its Response to the request for provisional measures and on 28 July 2023 the Registry informed the Respondent State that the Court had granted an extension of ten (10) days.
15. On 14 July 2023 the Respondent State filed its Response to the request for provisional measures and this was served on the Applicants on the same date.
16. On 9 August 2023 the Applicants filed observations on the Respondent State's Response to their request for provisional measures and this was served on the Respondent State, for its information, on 23 August 2023.

V. PRAYERS OF THE PARTIES

17. The Applicants pray as follows:
 - i. The Court is requested to declare that it has jurisdiction to hear this Application.
 - ii. The Court is requested to declare that this Application is admissible.
 - iii. The Court is requested to declare that the Charter and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights have been violated as aforesaid.
 - iv. The Court is requested to order that the detention and prosecutions of which the Applicants complain cease.
 - v. The Court is requested to order that any convictions resulting from the arrests, detention, and prosecutions of which the Applicants complain be annulled by the Respondent State.

- vi. The Court is requested to order that the Respondent State undertake an investigation into the death of Mr. Bouzayene.
 - vii. The Court is requested to order that the Respondent State pay compensation to the Fifth Applicant and the First through Fourth Applicants' relatives in respect of their moral damage in such sums as the Court thinks fit.
 - viii. The Court is requested to order that the Respondent State provide guarantees of non-repetition in respect of the violations found by the Court.
 - ix. The Court is requested to order that the Respondent State pay the Applicants' costs.
18. In its Response to the request for provisional measures, the Respondent State, while reserving its right to respond to the main Application, submits that the request for provisional measures has no legal or factual basis and is nothing more than mere allegations which must be dismissed for lacking merit.

VI. PRIMA FACIE JURISDICTION

19. Apart from praying that the Court should declare that it has jurisdiction to hear this Application, the Applicants did not make any submissions specifically addressing the Court's jurisdiction.
20. The Respondent State did not make any submissions addressing the Court's jurisdiction.

21. The Court notes that Article 3 (1) of the Protocol provides as follows:

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter,

this Protocol and any other relevant Human rights instrument ratified by the States concerned.

22. The Court further notes that under Rule 49 (1) of the Rules: “The Court shall conduct preliminary examination of its jurisdiction (...) in accordance with the Charter, the Protocol and these Rules.” However, with regard to requests for provisional measures, and in accordance with its jurisprudence, the Court does not have to satisfy itself that it has jurisdiction on the merits of the case, but merely that it has *prima facie* jurisdiction⁵.
23. In the instant case, the Court recalls that the Respondent State has ratified the Charter and the Protocol and deposited the Declaration. Furthermore, as mentioned in paragraph 2 of this Ruling, the rights alleged, by the Applicants, to have been violated are protected by the Charter, the ICCPR and the ICESCR, all being instruments to which the Respondent State is a party.
24. Given the above, the Court concludes that it has *prima facie* jurisdiction to consider this request for provisional measures.

VII. ON THE REQUEST FOR PROVISIONAL MEASURES

25. In their request for provisional measures, the Applicants have indicated two broad requests as follows:

⁵ See *African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiria* (Provisional measures) (25 March 2011) 1 AfCLR 17, §10 ; *Komi Koutche v. Republic of Benin* (Provisional measures) (2 December 2019) 3 AfCLR 725, § 14 ; *Ghati Mwita v. United Republic of Tanzania* (Provisional measures) (9 April 2020) 4 AfCLR 112, § 14 ; *Symon Vuwa Kaunda & five (5) others v. Republic of Malawi*, ACtHPR, Application n° 13/2021 Order (Provisional measures), 11 June 2021, § 11.

First provisional measure:

The detained relatives of the First through Fourth Applicants are to have unimpeded access to their lawyers and to doctors of their choice.

The First through Fourth Applicants are to likewise have unimpeded access to the lawyers instructed by their detained relatives and to the doctors chosen by their detained relatives to be informed as to the condition of their detained relatives, insofar as those detained relatives' consent.

Second provisional measure

The Respondent State is to provide particulars of the legal and factual grounds on which the First to Fourth Applicants' relatives are being detained and prosecuted.

The Respondent State is to suspend the conviction of Mr. Ghannouchi entered on 15 May 2023.

The Respondent State is to release the detained relatives of the First to Fourth Applicants, subject to such conditions as the Respondent State considers, with the approval of this Court, to be necessary and proportionate

26. In substantiation of the first request ,the Applicants contend as follows

... the First through Fourth Applicants urgently require access to the lawyers instructed by their detained relatives and to the doctors that they choose in order to verify, with the consent of their detained relatives, that the detained relatives are in a position to defend themselves and are being appropriately treated, not least so that they can effectively litigate before this Court. This matter is extremely grave because, if the detained relatives are not in a position to defend themselves or are not being appropriately treated, the Applicants will need to take immediate action to rectify this situation, including by taking the necessary steps in these proceedings before this Court.

27. As for the second request, the Applicants contend that:

In the present context, it is a matter of extreme gravity that the Applicants remain uncertain as to the basis on which their relatives are detained as it inhibits their ability to assist the detainees and to challenge the Respondent State's conduct before this Court.

...

As set out in the Application, it is clear that the arrests and detention of the First to Fourth Applicants' relatives have not been undertaken in conformity with the international human rights obligations of the Respondent State. Given the importance of the liberty of the person, and the vulnerability of many of the detainees and the inability or unwillingness of the Respondent State to safeguard their well-being and dignity in detention, as illustrated by the case of Mr. Ferjani, it is a matter of urgency that the detainees be released from detention, albeit on such conditions as the Respondent State considers, with the approval of this Court, to be necessary and proportionate. This is a matter of extreme gravity because of the importance of the obligations that have not been respected and the vulnerability of detainees such as Mr. Ghannouchi and Mr. Ferjani.

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28. In relation to the legal and factual basis for arresting and detaining the First to the Fourth Applicants, the Respondent State points out that several cases were filed against the Applicants at the Tunis Court of First Instance, Judicial Pole for the fight against Terrorism and Sousse Court of First Instance. These cases, it is averred were based on the legal texts in force including the Criminal Code or the Basic Law to Combat Terrorism No. 26 of 2015 dated 07/08/2015 and revised by the Basic Law No. 09 of 2019 dated 23/01/2019. Some of the charges were also based on the provisions of Decree No. 54 of 2022 dated 13/09/2022, which are legal texts in force within the Respondent State. The Respondent State also points out that the crimes attributed to the Applicants are common crimes that are prosecuted before the ordinary courts.

29. In respect of the allegation that the detained persons were not permitted to contact their lawyers and that the conditions of their detention were inconsistent with law, the Respondent State submits that in line with Article 13 of its Code of Criminal Procedure, the families of the detainees were informed of their detention and the detainees were presented for medical examination, when necessary, under the supervision of the Public Prosecutor. It is also submitted that the detention of the Applicants was authorised in writing and followed by an investigation. It is also pointed out that judges interrogated the defendants in front of their lawyers, according to the minutes of the interrogation and recorded their pleadings and substantive defences. The Respondent State thus submits that the detainees were permitted periodic and continuous visits by their lawyers in accordance with its laws.

30. In relation to the conditions of detention, the Respondent State submits that the detainees enjoy normal living conditions in their prisons, just like other prisoners or detainees with proper sanitary facilities and other amenities provided to them in uncrowded rooms. It also points out that the Applicants enjoy equal and non-discriminatory visits by their relatives on a weekly basis under judicial supervision.

31. The Court notes Article 27(2) of the Protocol which provides as follows:

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.

32. The provisions of Article 27(2) of the Protocol, the Court observes, find further expression in Rule 59(1) of the Rules which states that:

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. ."

33. From the above provisions, it is clear that the Court is vested with discretion to decide, on a case-by-case basis, whether the specific context of a case requires it to order provisional measures or not.
34. As reiterated in the Court's jurisprudence, urgency, which is consubstantial with extreme gravity, means a "real and imminent likelihood that irreparable harm will be caused before it renders its final decision".⁶ The Court emphasises that the risk in question must be real, which excludes the purely hypothetical risk and explains the need to remedy it immediately.⁷ With regard to irreparable harm, the Court considers that there must be a "reasonable likelihood of its occurrence" having regard to the context and personal circumstances of the applicant.⁸
35. The Court emphasises that the requirements of urgency or extreme gravity and irreparable harm, are cumulative, so that if one of them is lacking, the provisional measures requested cannot be ordered.
36. In determining requests for provisional measures, therefore, the Court keeps in mind the principles outlined above and bears in mind, particularly, the fact that provisional measures are of a preventative nature and thus can only be granted if a Party fulfils all the necessary conditions.⁹

⁶ *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin*, Application n° 062/2019, Order of 17 April 2020 (2020) (Provisional measures) (2020) 4 AfCLR 123, § 61.

⁷ *Ibid* 62

⁸ *Ibid* 63.

⁹ *Ibid*, § 60

37. The Court will now deal with the two requests for provisional measures as filed by the Applicants being, first, the request to allow the detainees access to lawyers and doctors of their choice and, second, the request for clarification of the reasons for the detention of the detainees and for orders for the release of the detainees.

A. The request to allow detainees access to lawyers and doctors of their choice

38. The Applicants pray that their detained family members be given access to lawyers and doctors of their choice and that they in turn be permitted access to these lawyers and doctors to obtain information about the conditions of the detainees.

39. In support of their prayer, the Applicants aver that their request is urgent and that the situation is one of gravity since it necessary that the detainees and their families communicate with lawyers and doctors. They add that the charges that may be filed against the detainees would be very serious in the national law of the Respondent State, and that the penalty may involve the death penalty. They state that the detainees need to communicate with doctors of their choice and their families, not only because of the fragility of their health condition, but also because depriving them of this right may lead to irreparable damages. The Applicants submit that on the basis of the Court's jurisprudence, their request meets the conditions for grant of an order for provisional measures.¹⁰

40. The Applicants also submit that their request is urgent in order to ensure that the detainees are in a position to be able to defend themselves and that their treatment is fair to be able to take plea during their trial. They add that depriving

¹⁰ The Applicants cite the following decisions in support: *African Commission on Human and Peoples' Rights v. Libya*, Application No. 002/2013, Order of 15 March 2013(2013) 1 AfCLR 145, and *Lohe Issa Konate v. Burkina Faso*, Appl. No. 004/2013, Order of 4 October 2013 (2013) 1 AfCLR 310; and *Leon Mugesera v. Rwanda* Application No. 021/2017, Order of 28 September 2017 (2017) 2 AfCLR 149.

the detainees of access to lawyers means that they cannot participate in defending themselves. In this situation, according to the Applicants, the damage that may occur cannot be remedied later, even if the Court ordered the release of the detainees because they may have already served their prison terms.

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41. The Respondent State refutes the Applicants claims that their relatives were denied access to their lawyers and that the conditions of their detention are not compliant with the law. It further submits that by examining the detention records and the interrogation records, the formal and substantive procedures stipulated by the law within the provisions of Chapter 13 have been respected, including medical examination of the detainees, when necessary. It also points out that the detention of the detainees was done under authority of the Public Prosecutor, which authorized the detention in writing, then opened an investigation, and the judges interrogated the defendants in the presence of their lawyers.
42. The Respondent State adds that referring the files of those concerned to the Indictment Chamber, as a second stage of investigation, guarantees that the Department will play its oversight role in respecting the procedures and guaranteeing the rights of the accused as stipulated in the provisions of the Criminal Procedure Code and the provisions of the Anti-Terrorism Law for those who have been tried on the basis of that law.
43. The Respondent State also alleges that, contrary to what the Applicants claim, the detainees are given regular and continuous visits by their lawyers, out of respect for the prisoner's right to meet with a lawyer. It also points out that within the framework of the General Authority for Prisons and Reform's endeavour to facilitate the tasks of lawyers, the meeting space for lawyers in

Mornaguia Prison has been reinforced with five (5) additional offices to support the lawyers' right to visit since March 2023.

44. In the view of the Respondent State, therefore, the detainees enjoy normal living conditions in prison, similar to other prisoners or detainees and that they reside in uncrowded rooms that contain all sanitary facilities and enjoy all the rights conferred upon them by law. The Respondent State also submits that the detainees enjoy linking up with their families and their relatives on a two-week basis, on an equal footing with other detainees.

45. The Court notes, from the record, that the father of the First Applicant is an old man of over eighty (80) years of age and that he was sentenced to imprisonment in absentia. Given his age, the Court considers that there is a plausible risk to his health if, as alleged, he is not provided with regular access to medical practitioners. This may ultimately cause irreparable harm.
46. The Court also notes that the family members of the Second, Third and Fourth Applicants have been imprisoned without a judicial ruling and that no information is available on the procedures followed against them. It is also alleged that the detainees are in poor health yet they have to follow-up and respond to the legal procedures leading up to their detention.
47. The information on record suggests that the condition of imminent danger and urgency are satisfied given that the procedures followed in the arrest and imprisonment of the Applicants' relatives are not clear especially in terms of clarifying the charges that they are answering.

48. The Court, therefore, finds that the danger faced by the four Applicants' detained relatives is real and not hypothetical, as it relates to their health and access to services of lawyers. In the circumstances, therefore, the damage that may be suffered by the Applicants' relatives may not be remedied by reparations.

49. The Court, therefore, grants the Applicants' request for an order to allow the detainees and their families access to doctors and lawyers of their choice to follow up on their legal and health issues and to communicate freely with their families.

B. Clarification of the legal reasons and circumstances of the detention of the detainees and request for their release

50. The First, Second, Third and Fourth Applicants request clarification of the legal basis and facts that led to the imprisonment of their relatives. They pray for the stay of execution of the conviction of Mr. Ghannouchi issued on 15 May 2023, and the release of family members of the Second, Third and Fourth Applicants on conditions such as the Respondent State may deem fit and necessary. The Applicants argue that international human rights law recognizes the rights of detainees to be informed of the charges against them and the circumstances which led to their arrest. They add that it is dangerous for their relatives to remain in a state of uncertainty regarding the legal grounds for their detention.

51. The Applicants also submit that the conviction of Mr. Ghannouchi, on 15 May 2023, should be suspended pending a decision by Court in the present Application, because it is unfair to pronounce the decision, penalty and execution of the sentence while hearing of the case is underway before this Court. They further submit that the danger is imminent because of the type of penalty, which is imprisonment and a fine, for an elderly person with health

problems. The Applicants invoke the Court's jurisprudence in support of their request.¹¹

52. The Applicants add that they believe that, as indicated in the main Application, it is clear that the arrest of their relatives was not carried out in accordance with the international human rights obligations of the Respondent State. In view of the importance of the freedom of individuals and the fragility of the health status of the detainees, and the Respondent State's non-compliance with the requirements of the dignity of the detainees, as was allegedly evident in the case of the detainee Sayed Al-Ferjani, they submit that it is paramount to release the detainees. The Applicants further argue that the harm incurred by their relatives cannot be remedied.

53. The Applicants proceed to state that all their relatives are subjected to irreparable harm due to their continued detention, their fragile health conditions, the impact of the imprisonment on them, and the denial of their right to participate in public life and freedom of expression. They conclude that allowing detainees to be held in prison means allowing the Respondent State to persecute their relatives.

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¹¹ The Applicants invoke the following decisions in support: *Laurent Gbagbo v. Côte d'Ivoire*, where the Court ordered in Application No. 025/2020 in its order issued on 25 September 2020 (Provisional Measures) *Sébastien Germain Ajavon v. Republic of Benin*, Application No. 013/2017, Order of 7 December 2018 (provisional measures) and *Sébastien Germaine Ajavon v. Republic of Benin*, Application No. 027/2020, Order of 29 March 2021 (provisional measures) and *Sébastien Germain Ajavon v. Republic of Benin* Application No. 027/2020, Order of 1 April 2021 (provisional measures) and *Gabi Khodey and Nabih Khodey v. Republic of Benin*, Application No. 008/2020, Order of 28 February 2020 (provisional measures) and *Charles Kajoloweka v. Republic of Malawi*, Application No. 55/2019, Order of 27 March 2020 (provisional measures) and *Houngue Eric Noudehouenou v. Republic of Benin*, Application No. 004/2020, Order of 6 May 2020 (provisional measures) and *Houngue Eric Noudehouenou v. Republic of Benin*, Application No. 032/2020/, Order of 22 November 2021 (provisional measures).

54. The Respondent State for its part submits that that the detainees are facing charges in several cases distributed between the Tunis Court of First Instance, the Judicial Centre for Combating Terrorism, and the Court of First Instance in Sousse 2.
55. The Respondent State adds that, by reviewing the cases faced by the Applicants' relatives, the legal bases on which each one of them is detained are clear. It submits that the detentions were based on the legal provisions in force, whether in the Criminal Code or the Basic Law related to combating terrorism No. 26 of 2015 issued on August 07, 2015, and revised by Basic Law No. 09 of 2019 issued on September 13, 2022, these being legal texts in force in the Respondent State...

56. The Court reiterates its position that it is not required, at this stage, to consider the merits of alleged violations by the Respondent State of the rights of the Applicants' detained relatives. Rather, it is required to determine whether the circumstances of this request warrant an order for the Respondent State to take provisional measures or not.¹²
57. In respect of the First Applicant's father, the Court notes, from the record, that he was detained following a trial on 15 May 2023. after being accused of glorifying terrorism. In his case, the Court finds, the reasons and circumstances leading to his detention are thus clear. As to whether the reasons and circumstances merited the detention when assessed in the light of the Respondent State's obligations under the Charter, the Court holds that this is an inquiry to be conducted at the merits stage of these proceedings. The Court thus dismisses the prayer for the quashing of the conviction of the First Applicant's father.

¹² *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin*, Application n° 027/2020, ACtHPR Order of 1 April 2021 (Provisional measures), §30. *Adama Diarra (Vieux Blen) v. Republic of Mali*, Application n° 47/2020, ACtHPR Order of 29/03/2021 (Provisional measures), § 23.

58. With regard to the families of the Second to the Fourth Applicants, the Court notes that there is no information provided on the circumstances of their arrest. It also does not appear, from the record, that they were actually tried or charged. The Court also notes that the Applicants' families claim that their health is at great risk. More specifically, the Applicants complain that their relatives have been subjected to harsh, inhumane conditions in prison.
59. The Court, for the same reasons as those explained earlier in respect of the First Applicant's father, cannot order the release of the relatives of the Second through to the Fourth Applicant at this stage, as this may pre-empt its findings in respect of the merits of the Application. However, given the lack of information in respect of the detention of the Applicants' relatives the Court orders the Respondent State to provide adequate information clarifying the reasons for which the Applicant's relatives are detained.
60. For the avoidance of doubt, the Court confirms that this Order is provisional in nature and in no way prejudices its findings on jurisdiction or on the admissibility and the merits of the Application.

VIII. OPERATIVE PART

61. For these reasons;

THE COURT,
Unanimously

- i. *Orders*, the Respondent State to take all measures to eliminate all barriers that prevent the four (4) detainees, and their families, to have access to and communicate with lawyers and doctors of their choice;

- ii. *Orders* the Respondent State to furnish the four (4) detainees, their lawyers, and their families with adequate information and facts relating to the legal and factual basis for the detention of the Applicants' relatives;
- iii. *Dismisses* the request for the release of the four (4) detainees
- iv. *Orders* the Respondent State to report on the measures taken to implement this order within fifteen (15) days from the date of its notification.

Signature:

Imani D. Aboud, President;



And

Robert Eno, Registrar.



Done at Arusha this Twenty-Eighth Day of August in the year two thousand and twenty-three in Arabic, English and French languages, the Arabic text being authoritative.

