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COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES
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PRESS RELEASE
ARMAND GUEHI V. UNITED REPUBLIC OF TANZANIA
APPLICATION No. 001/2015
(Judgment on Merits and Reparations)

Tunis, 7 December 2018: The African Court on Human and People's Rights (the African Court or the Court) delivered its judgment in the case of *Armand Guehi v. United Republic of Tanzania*.

On 6 October 2005, the Applicant was arrested by security officers of the former International Criminal Tribunal for Rwanda (ICTR) in connection with his wife's disappearance. He was handed over to the Tanzanian police and detained. The Applicant was subsequently charged with the murder of his wife before the High Court of Tanzania at Moshi. He was found guilty, convicted and sentenced to death on 30 March 2010 and is currently incarcerated at the Arusha Central Prison. The Applicant filed a notice of motion for review of the Court of Appeal's decision, and while the request for review awaited hearing, he filed Application No. 001 of 2015 before the African Court alleging that several of his rights were violated in the course of the domestic proceedings.

The Court found that it had jurisdiction to hear the Application under Article 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) and Rule 26 of the Rules of Court (the Rules). With respect specifically to whether it has jurisdiction to consider allegation of violation of the right to consular assistance provided for under Article 36(1) of the Vienna Convention on Consular Relations (VCCR), the Court held that given that the rights whose violation is alleged are also protected under Article 7 of the Charter, it has jurisdiction to consider the claims under the latter instrument.

The Court also found that the Application fulfilled all the admissibility requirements set out under Article 56 of the African Charter on Human and Peoples' Rights (the Charter). The Court dismissed the Respondent State's objection that the Applicant had failed to exhaust local remedies by raising some issues for the first time before the Court and not awaiting completion of the review process before filing his Application. The Court further dismissed the Respondent State's argument that the Application had not been filed within a reasonable time. The Court held that the Application complied with the other admissibility requirements that were not in contention between the Parties.

With respect to the merits of the case, the Applicant alleged the violation of his rights to a fair trial, namely to be assisted by an interpreter and a lawyer, to be provided with consular assistance provided under Article 36 of the VCCR, to be presumed innocent, to property and to dignity.

The Court considered whether the presumption of guilt inferred from the Applicant's allegation that his trial was not conducted in a proper and professional manner amounted to a violation of Article 7(1)(b) of the Charter. The Court held that the Applicant did not adduce any evidence to support this claim and, as a consequence, did not find a violation of his right to be presumed innocent guaranteed under Article 7(1)(b) of the Charter.

The Court also considered whether the failure to provide the Applicant with an interpreter and access to a lawyer during the domestic proceedings; the lack of consular assistance and allegations that the investigation was conducted in an improper and insufficient manner amounted to a violation of Article 7(1)(c) of the Charter. The Court held that not being provided an interpreter and a lawyer during the domestic proceedings did not affect the Applicant's ability to defend himself because, as per the facts, the Applicant had sufficient knowledge of the language in which he was interviewed and agreed to the contents of his statement which he signed. He also had ample opportunity to access a lawyer but declined to do so, as the records show that the Applicant acknowledged meeting with a lawyer on the day of his arrest before he gave his statement. In relation to the alleged violation of the Applicant's right to consular assistance guaranteed under Article 36(1) of the VCCR the Court held that, having found that the rights invoked are also protected under Article 7 of the Charter and were already dealt with as such, it did not deem it necessary to consider the same allegations afresh.

The Court also examined whether the Respondent State's handling of the Applicant's property, after he was arrested, amounted to a violation of Article 14 of the Charter. In that respect, the Court held that the Applicant did not challenge the Respondent State's contention that it handed over all the items found in the house to the International Criminal Tribunal for Rwanda (ICTR), as per an outstanding agreement and in line with its international obligations. The Court consequently dismissed the allegation of violation of the right to property.

The Court further considered the issue whether the duration of the domestic proceedings, that is, one (1) year, ten (10) months and six (6) days during which the Applicant remained in custody and two (2) years and six (6) months before the trial actually started constituted a reasonable time as prescribed under Article 7(1)(d) of the Charter. The Court held that in circumstances where the Applicant was in custody and did not impede the process, the Respondent State bore an obligation to ensure that the matter was handled with due diligence and expeditiously. The Court found that any delay in such a case would be a violation of the Applicant's right to have his cause heard within a reasonable time and therefore that the Respondent State had violated Article 7(1)(d) of the Charter..

The Court also examined the issue whether the Applicant's treatment during detention amounted to a violation of Article 5 of the Charter. The Court held in that regard that where the Applicants are in custody and unable to prove their allegations because the means to verify the same are likely to be in the control of the State, the burden of proof shifts to the Respondent State as long as the Applicants make a *prima facie* case of violation. The Court determined that in the present case, the Respondent State failed to provide evidence to contradict the Applicant's allegations that he was not given food on a regular basis, which was twice over a period of ten days. However, with respect to the allegation that the Applicant was left to sleep on the floor without a blanket and restricted from accessing friends and relatives, the Court took the view that detention conditions necessarily involve some restrictions of movement, communication and comfort. Overall, however, the Court found that the Respondent State violated Article 5 of the Charter with respect to deprivation of food.

The Court also considered whether the violation of other Articles of the Charter amounted to a violation of Article 1 of the same. Having found that the Respondent State had violated Articles

5 and 7(1)(d) of the Charter, the Court found that the Respondent State had violated Article 1 of the Charter.

With respect to the Applicant's allegation that he had suffered mental anguish as a consequence of the delayed proceedings before domestic courts, the Court found that it was a claim for reparation and not an alleged violation.

On reparations, the Applicant requested that the Court quash his conviction, set aside his sentence and restore his liberty. The Applicant also requested payment for moral damages suffered by him, his friends and relatives; payment for monetary loss suffered by his friends and family due to his undue detention; payment for legal fees incurred during proceedings in domestic courts; an order for guarantee of non-repetition of the violations; and an order for publication of the judgment by the Respondent State.

With respect to the Applicant's prayer that the conviction be quashed and the sentence set aside, the Court held that the violations it found did not affect the processes which led to the conviction and sentencing of the Applicant to the extent that he would have been in a different position had the said violations not occurred. Furthermore, according to the Court, the Applicant did not sufficiently demonstrate nor did the Court establish that his conviction and sentencing were based on arbitrary considerations leading to his continued incarceration being unlawful. With respect to pecuniary damages, the Court granted the Applicant the sum of US Dollars Five Hundred (\$500) for being subjected to inhuman and degrading treatment; and the sum of US Dollar Two Thousand (\$2,000) for not being tried within a reasonable time and the anguish that ensued therefrom. The Court dismissed all other claims, including on payment of legal fees incurred in proceedings both before national courts and in the present Application either for lack of merits or failure to substantiate the claims.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <http://en.african-court.org/index.php/cases/2016-10-17-16-18-21#latest-decisions>

For any other queries, please contact the Registrar by email registrar@african-court.org and africancourtmedia.org

The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.