

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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

IN THE MATTER OF

ARMAND GUEHI

VS.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO .001/2015

ORDER FOR PROVISIONAL MEASURES



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The Court Composed of; Elsie N. THOMPSON, Vice President, Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, El Hadji GUISSÉ, Ben KIOKO, Rafâa BEN ACHOUR, Angelo Vasco MATUSSE- 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 8 (2) of the Rules of Court ("hereinafter referred to as the Rules"), Justice Augustino S. L. RAMADHANI, President of the Court and a national of Tanzania, did not hear the Application.

In accordance with Article 22 of the Protocol and Rule 8 (2) of the Rules, Justice Sylvain Oré, Member of the Court and a national of Côte d'Ivoire, did not hear the Application.

In accordance with Rule 8(2)(d) of the Rules of Court, Justice Solomy Balungi BOSSA, Member of the Court, did not hear the Application.

In the matter of:

ARMAND GUEHI

VS

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application



1. The Court received on 6 January, 2015, an application by Armand Guehi, a citizen of Côte d'Ivoire (herein after referred to as "the Applicant"), instituting proceedings against the United Republic of Tanzania, (hereinafter referred to as "the Respondent"), alleging that the Respondent has violated his rights contained in International Human Rights Treaties.
2. The Applicant, who is in Ukonga Central Prison, Dar es Salaam, Tanzania, was sentenced to death by the High Court of Tanzania at Moshi on 30 March, 2010 for murder. That death sentence was confirmed by the Court of Appeal, which is the Highest Court in Tanzania, on 28 February, 2014.
3. The Applicant alleges, *inter alia*, that:
 - (a) His conviction cannot be said to have been fair and just, adding that his right to fair trial was prejudiced, and several of his rights were violated in the process.
 - (b) Save for the trial in 2010, the Respondent did not provide him with language assistance at critical stages of the case, such as when he was interviewed and recorded his statements at the Police Station, while at the time of his arrest he could only speak and understand the French language. In addition, he alleges that the Respondent never facilitated consular assistance for him.
 - (c) After his arrest, the Respondent failed to secure his properties in his house in Arusha and as a result the said properties were arbitrarily disposed of.

II. Procedure before the Court

4. The Application was received at the Registry of the Court on 6 January, 2015.

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5. Pursuant to Rule 35(2)(b) and 35(4)(b) of the Rules of Court, on 21 January 2015, the Registry forwarded copies of the application to the Republic of Côte d'Ivoire, in accordance with Article 5(2) of the Protocol and drew the attention of Côte d'Ivoire to the provisions on intervention set out in Rule 53(1) of the Rules of Court.
6. By Note Verbale dated 1 April, 2015, the Republic of Côte d'Ivoire notified the Registry of its intention to intervene in the matter.
7. By letter dated 5 January 2016, the Respondent submitted its Response to the Application.
8. On 2 March 2016, the Registry received Côte d'Ivoire's application to intervene in the matter.

III. Jurisdiction

9. In dealing with an application, the Court has to ascertain that it has jurisdiction on the merits of the case under Articles 3 and 5 of the Protocol.
10. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.¹
11. 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'.

¹ See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 15 March 2013) and Application 006/2012 African Commission on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated 15 March 2013); Application 004/2011 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

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12. The Respondent ratified the African Charter on Human and Peoples' Rights on 9 March 1984 and the Protocol on 10 February 2006, and is party to both instruments; it equally deposited, on 29 March 2010, a declaration accepting the competence of the Court to receive cases from individuals and Non-Governmental Organizations, within the meaning of Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.
13. The alleged violations the Applicant is complaining about are guaranteed under Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights ("hereinafter referred to as ICCPR"), and the Court therefore has *prima facie* jurisdiction *ratione materiae* over the application. The Respondent acceded to the International Covenant on Civil and Political Rights (ICCPR) on 11 June 1976 and deposited its instrument of accession on the same date.
14. In light of the foregoing, the Court has satisfied itself that, *prima facie*, it has jurisdiction to deal with the application.

IV. On the provisional measures sought

15. In his Application, the Applicant did not request the Court to order provisional measures;
16. 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 when necessary to avoid irreparable harm to persons", and "which it deems necessary to adopt in the interest of the parties or of justice;
17. 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;
18. The Applicant is on death row and it appears from this application that there exists a situation of extreme gravity, as well as a risk of irreparable harm to the Applicant;

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19. Given the particular circumstances of the case, where there is risk of execution of the death penalty which will jeopardise the enjoyment of the rights guaranteed under Article 7 of the Charter and Article 14 of the ICCPR, the Court has decided to invoke its powers under Article 27(2) of the Protocol ;
20. The Court finds that the situation raised in the present application is of extreme gravity and represents a risk of irreparable harm to the rights of the Applicant as protected by Article 7 of the Charter and Article 14 of the ICCPR, if the death sentence were to be carried out.
21. Consequently, the Court concludes that the circumstances require an Order for provisional measures, in accordance with Article 27(2) of the Protocol and Rule 51 of its Rules, to preserve the *status quo ante*, pending the determination of the main application.
22. For the avoidance of doubt, this Order shall not in any way prejudice any final findings the Court shall make regarding its jurisdiction, the admissibility and the merits of the application.

For these reasons,

23. The Court, unanimously, orders the Respondent:
- a) To refrain from executing the death penalty against the Applicant pending the determination of the application.
 - b) To report to the Court within thirty (30) days from the date of receipt of this Order, on the measures taken to implement the Order.

Done at Arusha, this 18th day of March in the year 2016, in English, French, Portuguese and Arabic, the English version being authoritative.



Signed:

Elsie N. THOMPSON, Vice President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Duncan TAMBALA, Judge

El Hadji GUISSÉ, Judge

Ben KIOKO, Judge

Rafâa Ben ACHOUR, Judge

Angelo Vasco MATUSE, Judge; and

Robert ENO, Registrar.

