

Case summary

By Gillian Higgins, 13 December 2011

Application 006/2011 Association Juristes d’Afrique pour la Bonne Gouvernance v. La Côte d’Ivoire

Background

Last week, Laurent Gbagbo made history. He became the first former president to appear before the International Criminal Court (ICC), following the issuance of a sealed indictment on 23 November 2011.

Following the presidential election in 2010, Mr. Gbagbo challenged the vote count, alleged fraud, and refused to stand down. He called for the annulment of results from nine of the country’s regions. Alassane Ouattara was declared the winner and was recognized as such by election observers, the international community, the African Union (AU), and the Economic Community of West African States (ECOWAS). However, the Constitutional Council -which according to Article 94 of the Ivorian Constitution both determines disputes in and proclaims the results of Presidential elections - declared that Mr. Gbagbo had won. After a short period of civil conflict, he was arrested by the Republican Army of Ivory Coast.

In last week’s hearing before the ICC, Laurent Gbagbo’s lawyer, Mr. Emmanuel Altit, complained that his client’s rights had been constantly violated by the Ivorian authorities. His complaint received the attention of the world’s media, having been delivered on the public stage of international justice, at the ICC. A similar complaint had been lodged earlier this year, but received no publicity, having been dismissed by the [African Court on Human and Peoples’ Rights](#) (AfCHPR), a little-known institution, sitting on the fringe of the leafy town of Arusha in Tanzania.

Application

The application to the AfCHPR was lodged on 5 May 2011 by an NGO based in Douala, Cameroon, namely the “Association Juristes D’Afrique Pour la Bonne Gouvernance”. The NGO alleged “[serious and massive violation by the Ivorian authorities of the fundamental and basic human rights of the legal and legitimate President of Cote d’Ivoire, His Excellency Laurent Gbagbo, since his abduction on 11 April 2011 at his official resident in Abidjan, as well as the rights of his wife, Mrs Simone Ehivet Gbagbo and some of his close aides.](#)” The summary explains that Mr Gbagbo had been incarcerated alone and that no judicial action had been formally brought against him by a competent judicial authority. It was alleged that the actions of Mr Ouattara, the incoming President, and his regime, had violated the provisions of Articles 2, 4, 5 and 6 of the African Charter on Human and Peoples’ Rights (“the Charter”).

Decision

The AfCHPR issued a decision on the application during the 21st ordinary session earlier this year. A panel of ten judges determined that the NGO did not have the requisite observer status before the African Commission to enable it to petition the court directly pursuant to Article 5(3) of the [Protocol](#)

[to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights \("the Protocol"\)](#). The Court determined therefore that it did not have jurisdiction to address the application. Notwithstanding its determination, the bench decided that it would refer the case to the African Commission on Human and Peoples Rights under Article 6(3) of the Protocol. To date, the Commission has not pronounced upon the application.

Comment

At the time of writing, it is not possible to determine whether the application submitted by the NGO was accompanied by any substantive documentation, NGO reports or even witness statements in support of the alleged breach of Mr Gbagbo's human rights. Neither is the application publically available on the AfCHPR's website. Reliance instead must be placed on a summary of the document prepared at the seat of the court.

Notwithstanding the fact that the current focus of international attention remains firmly upon the alleged crimes committed by Mr Gbagbo, in respect of which he finds himself before the ICC, serious attention must be given to any legitimate claims he may have in respect of his alleged mistreatment and breach of the Charter. The writer suggests that in order for this matter to be determined by a court of law, either Mr Gbagbo, lawyers on his behalf, or indeed "Les Juristes d'Afrique pour la Bonne Gouvernance" should formally request the African Commission to remit the case back to the AfCHPR for determination. Once the African Commission is seized of such an application, it *may* decide to submit the same to the AfCHPR. Such a submission by the Commission would endow the court with the jurisdiction it initially lacked to determine the application made on behalf of Mr Gbagbo by the Cameroonian NGO.

While the bright lights shine on the ICC in The Hague, the AfCHPR lingers in the heart of darkness, in danger of being forgotten. In order to avoid the fossilization of this important institution, it is imperative that NGOs and individuals, who do not possess the right of direct petition, consider lodging their applications with the African Commission, and requesting this body to petition the ACHPR on their behalf.