

15 November 1999
Communication No. 215/98

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-Sixth Ordinary Session
1-15 November 1999

RIGHTS INTERNATIONAL
v.
NIGERIA

DECISION

BEFORE: CHAIRMAN: Prof. E.V.O. Dankwa
VICE CHAIRPERSON: Mrs. Julienne Ondziel-Gnelenga
COMMISSIONERS: Professor Isaac Nguema, Dr. Ibrahim Ali Badawi El-Sheikh, Dr. Hatem Ben Salem, Mr. Kamel Rezag-Bara, Dr. Nyameko Barney Pityana, Mr. Andrew Ranganayi Chigovera, Mrs. Florence Butegwa, Mrs. Vera Mlangazuwa Chirwa, Mrs. Jainaba Johm

Citation: Rights Int'l v. Nig., Comm. 215/98, 13th ACHPR AAR Annex V (1999-2000)
Publications: IHRDA, *Compilation of Decisions on Communications of the African Commission On Human and Peoples' Rights Extracted from the Commission's Activity Reports 1994-2001*, at 277 (2002); *Documents of the African Commission on Human and Peoples' Rights, Vol. 2*, at 168 (Malcolm D. Evans & Rachel Murray eds., 2009); (2000) AHRLR 254 (ACHPR 1999)

RAPPORTEUR

23rd session: Commissioner Dankwa

24th session: Commissioner Dankwa

25th session: Commissioner Dankwa

26th Session: Commissioner Dankwa

SUMMARY OF FACTS

1. Complainant is an NGO based in the United States.
2. Complainant alleges that Mr. Charles Baridorn Wiwa a Nigerian student in Chicago was arrested and tortured at a Nigerian Military Detention Camp in Gokana.

3. Complainant alleges that Mr. Wiwa was arrested on 3 January 1996 by unknown armed soldiers in the presence of his mother and other members of his family.
4. It is alleged that Mr. Wiwa remained in the said Military detention camp from 2-9 January 1996.
5. While in detention, Mr. Wiwa was horsewhipped and placed in a cell with forty-five other detainees.
6. After Mr. Wiwa was identified as a relative of Mr. Ken Saro - Wiwa he was subjected to various forms of torture.
7. Enclosed in the communication is medical evidence of Mr. Wiwa's physical torture.
8. After 5 days in the detention camp in Gokana, Mr. Wiwa was transferred to the State Intelligence Bureau (SIB) in Port Harcourt.
9. Mr. Wiwa was held from 9-11 January 1996, without access to a legal counsel or relatives, except for a five minutes discussion with his grandfather.
10. Mr. Wiwa, it is alleged was not informed of the charges against him nor was he provided with an explanation for his prolonged detention until 11 January 1996
11. On 9 January 1996, Mr. Wiwa was finally allowed to prepare a statement in his own defence but without a legal counsel, and he did not know what to write.
12. On 11 January 1996, Mr. Wiwa and 21 other Ogonis were brought before the Magistrate Court 2 in Port-Harcourt, charged with unlawful assembly in violation of Section 70 of the Criminal Code Laws of Eastern Nigeria 1963.
13. The charging instrument states that Mr. Wiwa participated in the said unlawful assembly on 4 January 1996 which happens to be a day after he was arrested.
14. Mr. Wiwa however was granted bail.
15. While Mr. Wiwa was out on bail some un-known people believed to be government agents abducted him and threatened his life by forcing him into a car in Port-Harcourt.
16. On the advice of Human rights lawyers, Mr. Wiwa fled Nigeria on 18 March 1996 to Cotonou, Republic of Benin where the UN High Commissioner for Refugees declared him a refugee.
17. On September 17 1996, the US government granted him refugee status and he has been residing in the United States since then.

COMPLAINT

18. The complainant alleges that the following Articles of the African Charter on Human and Peoples' Rights have been violated: Articles 5, 6, 7 (1)(c) and 12 (1) and (2).

PROCEDURE

19. The Communication is dated 17 February 1998 and was received at the Secretariat on 19 March 1998.

20. At its 23rd ordinary session held in Banjul, The Gambia from 20-29 April 1998, the Commission decided to be seized of this communication and to notify the state concerned to send its comments on admissibility.

21. At its 24th ordinary session held in Banjul, The Gambia from 22 to 31 October 1998, the Commission declared the communication admissible and invited submissions on the merits of the case during the 25th ordinary session. The Commission also requested the Secretariat to study this communication and communication No. 205/ 97 with a view to consolidating them.

LAW

ADMISSIBILITY

22. Article 56 (5) of the Charter provides:

"Communications...shall be considered if they: are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged."

23. The Commission declared the communication admissible on grounds that there was lack of available and effective domestic remedies for human rights violations in Nigeria under the military regime.

24. Relying on its precedents in communications 87/93 and 101/93, (the former was brought on behalf of seven men sentenced to death under a Decree which prohibits the courts from reviewing any aspect of the trial, while the latter was brought on behalf of the Nigerian Bar Association based on a Decree which infringed upon Nigerian lawyers' freedom of association and also precluded the courts from hearing cases relating to the said decree) the Commission interpreted the standard for constructive exhaustion of domestic remedies to be satisfied where there is no adequate or effective remedy available to the individual. In this particular case, the Commission found that Mr. Wiwa was unable to pursue any domestic remedy following his flight for fear of his life to the Republic of Benin and the subsequent granting of refugee status to him by the United States of America.

25. On the issue of consolidation of the communication with No. 205/97, the Commission decided that since it is a stage behind and since a decision on admissibility is yet to be taken on communication 205/97, it should not, therefore, delay decision on the merits of communication 215/98.

MERITS

26. The complainant alleges that while in detention, he was horsewhipped and subjected to various forms of torture. Article 5 of the Charter states:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

27. The complainant also alleges the illegal arrest and detention of Mr. Wiwa as being in contravention of his rights to liberty and security of person as guaranteed under Article 6 of the Charter, which provides:

"Every individual shall have the right to liberty and the security of person.. No one may be deprived of his freedom except for the reasons and conditions laid down by law. In particular, no one may be arbitrarily arrested or detained."

28. It is alleged further that except for the five minutes discussion Mr. Wiwa had with his grandfather, he was not allowed access to his relatives or a counsel and was also neither informed of the nature of the offence nor the reasons for his arrest and detention in violation of Article 7 (1)(c) of the Charter, which provides:

"Every individual shall have the right to have his cause heard.

This comprises: (c) the right to defence, including the right to be defended by counsel of his choice;"

29. In its Resolution expounding on the components of the right to fair trial, the Commission had observed that:

"...the right to fair trial includes, among other things, the following:

(b) persons who are arrested shall be informed at the time of the arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them; (e) the determination of charges against individuals, the individual shall be entitled in particular to:... i) Have adequate time and facilities for the presentation of their defence and to communicate in confidence with counsel of their choice."

30. The complainant alleged that he was abducted and threatened by persons believed to be agents of the government, an action which led to his fleeing the country for safety. He attests that his flight, as evidenced by the granting of refugee status to him by two countries (Republic of Benin and the U. S.) was based on well-founded fear of persecution by the Nigerian government. He attests further that since then, he has been living in the U. S. as a refugee. The above acts are in violation of Mr. Wiwa's rights to freedom of movement and residence and his right to leave and to return to his country guaranteed under Article 12(1) and (2) of the Charter, which state:

"(1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

(2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality."

31. Despite invitations to the Government of Nigeria for its response to the allegations in this communication, the Commission has received none. The Commission is, therefore, compelled to conclude the complaint on the facts in its possession, which are the allegations of the complainant.

FOR THE ABOVE REASONS, THE COMMISSION finds the government of Nigeria in violation of Articles 5, 6, 7(1) (c) and 12(1) and (2) of the Charter.

Done in Kigali, Rwanda on 15 November 1999.