

27 April-11 May 2005
Communication No. 269/2003

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Thirty-Seventh Ordinary Session
27 April-11 May 2005

INTERIGHTS ON BEHALF OF SAFIA YAKUBU HUSAINI AND ET AL

v.

NIGERIA

DECISION

BEFORE: CHAIRPERSON: Salamata Sawadogo
VICE CHAIRPERSON: Yassir S.A. El Hassan
COMMISSIONERS: Mohamed A. Ould Babana, Kamel Rezag Bara, Andrew R. Chigovera, Vera M. Chirwa, Emmanuel V.O. Dankwa, Jainaba John, Angela Melo, Sanji Mmasenono Monageng, Bahame Tom Mukirya Nyanduga

Citation: Interights v. Nig., Comm. 269/2003, 18th ACHPR AAR Annex III (2004-2005)
Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 718 (Malcolm D. Evans & Rachel Murray eds., 2009); (2005) AHRLR 56 (ACHPR 2005)

RAPPORTEUR

33rd Session: Commissioner Johm

34th Session: Commissioner Johm

35th Session: Commissioner Johm

36th Session: Commissioner Johm

37th Session: Commissioner Johm

SUMMARY OF FACTS

1. The complaint is filed by Interights on behalf of Safiya Yakubu Husaini and others who have been allegedly subjected to gross and systematic violations of fair trial and due process rights in the Sharia Courts in Nigeria.
2. The Complainant alleges that Ms Safiya Hussaini, a Nigerian woman and nursing mother

was sentenced to death by stoning by a Sharia Court in Gwadabawa, Sokoto State Nigeria, for an alleged crime of adultery, which sentence was the latest in a series of serious and massive violations of the right to fair trial and associated guarantees.

3. The Complainant alleges that Safiya's case is only one of the many cases to be decided under the recently introduced pieces of Sharia penal legislation in northern Nigerian States. All laws in Nigeria, at both Federal and State levels, ought to be compatible with both the constitution of 1999 and international (including regional) treaties ratified by Nigeria, and are required to particularly comply with the African Charter on Human and Peoples' Rights which is domestic law in the country.
4. In its complaints, the complainant also enumerates other similar instances of alleged violations of fair trial, personal dignity and the right to life. It alleged that in December 2002, a Ms Hafsatu Abubakar from Sokoto State was charged with "Zina," which is either voluntary premarital sexual intercourse or, if the person is married, to adultery.
5. On 19 January 2001, an unmarried woman called Bariya Magazu received 100 lashes in Zamfara State for having committed the offence of Zina. Ms. Magazu was also initially convicted of false accusation for failing to prove her declaration that three particular men had coerced her into having sexual intercourse, which men were not prosecuted. By an order of an Islamic Court in the same State, a Mr. Umaru Bubeh received 80 strokes of the cane on 9 March 2001 for drinking alcohol. On 4 May 2001, a Mr. Lawal Incitara's hand was amputated after a Sharia Court in same State found him guilty of stealing bicycles.
6. In Sokoto State, Sani Shehu and Garga Dandare were sentenced to have their right hands and left feet amputated after being convicted by a Sharia Court in Sokoto State on 20 December 2001. On 27 December 2001, the Upper Sharia Court in the same State convicted a Mr. Aminu Bello of theft and sentenced him to have his right hand amputated.
7. The Complainant alleges that in none of these case did the victims/accused persons receive nor were they offered competent or any legal representation. The rights of legal representation in the Sharia Courts are very limited and, even where they allow legal representation, only lawyers who are muslims can practice in them.
8. It is further alleged that the new Sharia penal legislations that are adopted in the various Nigeria States contain specifications that limit their application to people of Muslim faith but they dispense with all the fair trial safeguards recognised in the African Charter. Moreover, unlike in other criminal cases where accused persons are able to appeal to the Nigerian Supreme Court, which is the highest court in the country, appeals in the Sharia criminal cases end before the special Sharia Courts of Appeal. In effect, the Sharia penal legislation subject persons of Muslim faith to lower standards of fair trial merely by reason of their faith. In all the cases regarding the application of Sharia law for criminal cases, there is discrimination on grounds of the faith of the accused.

9. The Complaint also alleges that the rights of those tried under Sharia law are protected to a lesser extent than in the Penal Code for Northern Nigeria, valid for non-Muslim people, particularly concerning the right of representation, the right of appeal and the lack of knowledge of criminal procedure by the court. Under Sharia law, the death penalty is applied for offences that are not punishable with the death penalty under the Penal Code for Northern Nigeria. The criteria for appointing judges to the same court also fails short of international standards of training judicial personnel, and there is no requirement for judges to be legally qualified in law.
10. Together with its Complaint, the Complainant submitted a request for provisional measures to the African Commission in accordance with Rule 111 of the Rules of Procedure of the African Commission

COMPLAINT

11. The Complainant alleges serious and massive violations of Articles 2, 3, 4, 5, 6, 7, and 26 of the African Charter on Human and Peoples' Rights.

PROCEDURE

12. The Complaint was dated 30 January 2002 and received at the Secretariat on 31 January 2002.
13. On 5th February 2002, the Secretariat of the African Commission wrote to the Complainant acknowledging receipt of the complaint, and requesting the latter to forward the relevant information and evidentiary materials on the developments surrounding the application of the Penal Provisions of Sharia religious law before Nigerian Sharia Courts, and to forward to it complete and specific cases of alleged irregularities supported by relevant documentations. The Complainant was also asked to indicate to the Commission which of the specific decisions of the Sharia Courts had been executed, and which were pending.
14. On 6th February 2002, the Chairman of the African Commission addressed an Urgent Appeal to His Excellency, President Olusegun Obasanjo of the Federal Republic of Nigeria, respectfully urging Him to suspend further implementation of the Sharia Penal Statutes and decisions as well as convictions thereof, including the case of Ms. Safiya Yakubu, pending the outcome of the consideration of the complaints before the African Commission.
15. On the same date, the Chairman of the African Commission addressed a similar Urgent Appeal to His Excellency Amara Essy of the African Union, respectfully urging Him to draw the attention of the President of the Federal Republic of Nigeria to the Commission's requests and to and to positively respond thereof.
16. On 8 February 2002, the Secretariat of the African Commission faxed a copy of the Chairman's Urgent Appeal to the High Commission of the Federal Republic of Nigeria

in Banjul, The Gambia for onward transmission of the same to His Excellency, President Olusegun Obasanjo of the Federal Republic of Nigeria.

17. On 3 March 2002, the Complainant wrote to the Secretariat informing the latter that it will assemble as many of the documents as exist and would get back to the Secretariat on its progress.
18. On 7 March 2002, the Secretariat of the African Commission wrote to the Complainant confirming receipt of the same and reminding the latter that it would be awaiting for the relevant information.
19. On 19 March 2002, the Director of the Political Affairs Department of the African Union wrote to the Chairman of the African Commission that the Secretary General of the AU had formally taken up the matter at the level of H.E. Chief Olusegun Obasanjo, President of the Federal Republic of Nigeria. The Secretariat of the African Commission brought the same to the attention of the Chairman.
20. On 21 March 2002, the Chief of Staff to the President of the Federal Republic of Nigeria wrote, on behalf of His Excellency President Olusegun Obasanjo, to the Chairman of the African Commission acknowledging receipt of the Urgent Appeal and assuring him that the administration and many Nigerians equally shared his concern. The letter further expressed his optimism that, in the long run, justice would be done and Safiya's life would be spared. While noting that the Federal Government could not unilaterally suspend the Sharia Penal Statutes and decisions which were within the prerogative of the State government in accordance with the Nigerian Constitution, the letter assured the Chairman that the Administration would leave no stone unturned in ensuring that the right to life and human dignity of Safiya, and that of all other Nigerians that may be affected in future were adequately protected.
21. On 2 April 2002, the Secretariat of the African Commission wrote to the Complainant reminding it of the need for further information on Ms. Amina Lawal who was alleged to have been sentenced to a similar punishment by a Sharia Court in Katsina State. While informing the same of the pledge by the Nigerian Administration regarding the case of Safiya and the follow up by the AU Secretary General, the Secretariat reminded the Complainant that it still awaited for the submission of the documentation and information as requested in its previous letters.
22. On 19 April 2002, the Political Affairs Department of the AU wrote to the Secretariat of the African Commission informing the latter of the decision by the Federal Court of Appeal in Nigeria overturning the death sentence imposed on Safiya by a lower Court in Sokoto State thereby making the need to make further Presidential intervention unnecessary.
23. During the 31 Ordinary Session held in Pretoria, South Africa in May 2002, the Complainant orally informed the Secretariat that it was trying to compile the relevant

information on the complaint and that it would be best if the Secretariat waited for the same before further action on complaint.

24. On 27 August 2002, the Secretariat received a letter from the International Commission of Jurists expressing its concern in the fate of Ms. Amina Lawal and her child.
25. By a letter of 27 August 2002, the Secretariat informed the ICJ that the African Commission was following the developments in Nigeria regarding the application of Sharia Penal Statutes in the country, including and particularly, the case of Ms. Lawal, through the appropriate channels.
26. During the 32nd Ordinary Session held in Banjul, The Gambia in October 2002, the complainant orally informed the Secretariat that it was unable to compile the requested information in time, that it was in touch with its local partners in Nigeria on the case and suggested the Commission went ahead in dealing with the complaint.
27. During the intersession period before the 33rd Ordinary Session, the Secretariat called the complainant to inquire about the progress it made and on the status of the cases pending before national courts.
28. At its 33rd Ordinary Session held in Niamey, Niger from 15 to 29 May 2003, the African Commission examined the complaint and decided to be seized thereof.
29. On 12 June 2003, the Secretariat wrote to the complainants and Respondent State informing them of this decision and requested them to forward their written submissions on admissibility before the 34th Ordinary Session of the Commission.
30. A similar letter of reminder was sent out to the parties on 6 August 2003 and on 17 October 2003.
31. At its 34th Ordinary Session held in Banjul, The Gambia from 6th to 20th November 2003, the African Commission examined the complaint and decided to defer its consideration on admissibility to the 35th Ordinary Session.
32. On 9th December 2003, the Secretariat wrote to the parties informing them of this decision and further requesting them to forward to the African Commission their written submissions on the admissibility of the communication before the 35th Ordinary Session. The same was copied to the Respondent State's High Commission in Banjul, The Gambia.
33. The Secretariat sent a similar reminder to both parties on 29th April 2004 to send their written submissions on the admissibility of the communication before the 35th Ordinary Session.
34. At its 35th Ordinary Session held in Banjul, The Gambia from 21st May to 4th June 2004, the African Commission examined the complaint and decided to defer its consideration on admissibility to the 36th Ordinary Session.

35. At the same Ordinary Session, a copy of the complaint was handed over the Nigerian Delegation.
36. On 17th June 2004, the Secretariat wrote to the parties informing them of this decision and further requesting them to forward to the African Commission their written submissions on the admissibility of the communication before the 36th Ordinary Session. The same was copied to the Respondent State's High Commission in Banjul, The Gambia.
37. The Secretariat sent a similar reminder to both parties on 7th September 2004 to send their written submissions on the admissibility of the communication before the 36th Ordinary Session.
38. During the 36th Ordinary Session held in Dakar Senegal from 23rd November to 7 December 2004, the complainant orally informed the Rapporteur of the Communication of his wish to withdraw the case.
39. At the same Ordinary Session, the African Commission decided to defer its decision on the request for withdrawal to the 3ih Ordinary Session, pending a written confirmation of the same by the complainant.
40. On 23rd December 2004, the Secretariat wrote to the complainant and Respondent State informing them of this decision and requesting the former to forward its written request for withdrawal before the 3ih Ordinary Session of the Commission.
41. A similar reminder was sent to the complainant on 2nd February and 4th April 2005.
42. During its 37th Ordinary Session held from 2ih April to 11th May 2005 in Banjul, The Gambia, the African Commission received a written request for withdrawal, dated 2nd May 2005, from the complainant.

For the abovementioned reason the African Commission on Human and Peoples' Rights, Takes note of the withdrawal of the communication by the Complainant and decides to close the file.

Adopted by the African Commission on Human and Peoples' Rights at its 37th Ordinary Session held in Banjul, The Gambia from 27 April to 11 May 2005.