

11 May 2000
Communication No. 205/97

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-Seventh Ordinary Session
27 April - 11 May 2000

KAZEEM AMINU

v.

NIGERIA

DECISION

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

Citation: Kazeem Aminu v. Nig., Comm. 205/97, 13th ACHPR AAR Annex V (1999/2000)

Publication 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 282 (2002); Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 183 (Malcolm D. Evans & Rachel Murray eds., 2009); (2000) AHRLR 258 (ACHPR 2000)

RAPPORTEUR

22nd session: Commissioner Dankwa

23rd session: Commissioner Dankwa

24th session: Commissioner Dankwa

25th session: Commissioner Dankwa

26th session: Commissioner Dankwa

27th session: Commissioner Dankwa

SUMMARY OF FACTS

1. The complainant alleges that Mr. Ayodele Ameen (hereinafter referred to as “client”), a citizen of Nigeria was arbitrarily arrested, detained and tortured by Nigerian Security officials on several occasions between 1995 and the date of the complaint.
2. The complainant alleges that Mr. Ayodele Ameen while in detention on one occasion was denied medical treatment and also subjected to inhuman treatment.
3. The complainant alleges that his client is being sought after by the Nigerian Security Agents as a result of his political inclination which manifested itself in his role and involvement in agitation within the Nigerian society for a validation of the previously annulled June 12 1994 elections by the Nigerian Military Government.
4. The complainant alleges that his client has resorted to the courts for protection but to no avail by virtue of the provisions of Decree No. 2 of 1984 as amended.
5. As of the date of the communication, the complainant alleges that his client is in hiding after escaping arrest at the Aminu Kano International airport, Kano on his way to Sudan.
6. The complainant states that the matter is not pending in any court of law.

COMPLAINT

7. The complainant asserts that the following articles of the African Charter have been violated:

Articles 3(2), 4, 6 and 10(1).

PROCEDURE

8. The communication is dated 11 July 1997, and was received at the Secretariat of the Commission on 18 August 1997.
9. At its 23rd ordinary session held in Banjul, The Gambia, the Commission decided to be seized of the matter and to notify the Government of Nigeria accordingly. Further information was requested regarding the current situation of the victim.
10. At its 26th ordinary session of the Commission held in Kigali, Rwanda, the Commission declared the communication admissible and requested parties to submit their arguments on the merits of the case.

LAW

ADMISSIBILITY

11. The condition for the admissibility of this case was based on Article 56(5) of the Charter. This provision requires the exhaustion of local remedies before its consideration by the Commission.

12. The complainant alleged that his client had resorted to the courts for protection but to no avail, because of the operation of Decree No. 2 of 1984, as amended. This decree, it is alleged contains an ouster clause, which like most other decrees promulgated by the military government of Nigeria excludes the courts from entertaining any matter or proceedings relating to it.

13. Relying on its case law, (see Communications 87/93, 101/93 and 129/94) the Commission held that local remedies would not only be ineffective, but are sure to yield no positive result. Secondly, the Commission noted that the complainant's client is in hiding and still fears for his life. In this regard, the Commission calls in aid the statement of the representative of Nigeria in Communication 102/93 about the "chaotic" situation that had transpired after the annulment of the elections (see paragraph 57), the validation which the complainant's client is agitating for. Given the above situation and the constructive notice the Commission has about the prevailing situation under the Nigerian military regime, decided that it would not be proper to insist on the fulfilment of this requirement.

For the above reasons, the Commission declared the case admissible.

MERITS

14. The complainant alleges a violation of Article 3(2) of the Charter by the Respondent State. Article 3(2) provides:

Every individual shall be entitled to equal protection of the law

15. The Commission finds that the rampant arrests and detention of Mr. Kazeem Aminu by the Nigerian Security officials, which eventually led to his going into hiding for fear of his life has deprived him of his right to equal protection of the law guaranteed under Article 3 of the Charter.

16. The complainant had alleged that his client was tortured and subjected to inhuman treatment on several occasions by the Nigerian Security operatives. The allegation has not been substantiated. In the absence of specific information on the nature of the acts complained of, the Commission is unable to find a violation as alleged.

17. The complainant alleged that the series of arrests and detention suffered by his client, and his subsequent going into hiding is in violation of his right to life under Article 4 of the Charter.

18. The Commission notes that the complainant's client (victim) is still alive but in hiding for fear of his life. It would be a narrow interpretation to this right to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect for one's life and the dignity of his person, which this article guarantees would be protected in a state of constant fear and/or threats, as experienced by Mr. Kazeem Aminu. The Commission therefore finds the above acts of the security agents of the Respondent State in violation of Article 4 of the Charter. Article 4 provides:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

19. It is alleged that Mr. Kazeem Aminu was arbitrarily arrested and detained on several occasions between 1995 and the date of filing this communication (11 July 1997). In his explanation, the complainant asserts that he has resorted to the courts for protection but to no avail, because of the provisions of Decree No. 2 of 1984 as amended. The Decree, it is alleged, like other decrees promulgated by the military regime, contains an ouster clause barring courts from entertaining proceedings relating to it.

20. It is the duty of the State Party to apprehend persons whom it reasonably believes have committed or are in the process of committing offences recognised by its laws. However, such arrests and or detention must be in accordance with known laws, which in turn must be in accordance with the provisions of the Charter.

21. In the instant case, the Commission finds the above situation where the complainant's client is constantly arrested and detained, without charge and any recourse to the courts for redress arbitrary and in contravention of Article 6 of the Charter. Article 6 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.”

22. The complainant further alleged that the Respondent State is in violation of Article 10(1) of the Charter, in that his client is being sought after by the Nigerian security agents as a result of his political belief which manifested itself in his involvement in the agitation for the validation of the annulled June 12 elections. Article 10(1) provides:

“Every individual shall have the right to free association provided that he abides by the law.”

23. In considering the above, the Commission duly takes cognisance of the problem created as a result of the annulment of the elections in Nigeria and its earlier decision thereof (see decision on Communication 102/93). In the circumstance, the Commission finds the acts of the security agents towards Mr. Kazeem Aminu in contravention of his right to free association guaranteed under Article 10(1) of the Charter.

24. Unfortunately, the government of Nigeria has not responded to the several requests from the Commission for its reaction to the communication.

25. The African Commission in several previous decisions has set out the principle that where allegations of human rights violations go uncontested by the government concerned, particularly after repeated notification or request for information on the case, the Commission must decide on the facts provided by the complainant and treat those facts as given (see communications Nos. 59/91, 60/91, 64/91, 87/93 and 101/93).

26. In the circumstances, the Commission finds itself compelled to adopt the position that the facts alleged by the complainant are true.

FOR THE ABOVE REASONS, THE COMMISSION finds the Federal Republic of Nigeria in violation of Articles 3(2), 4, 5, 6 and 10(1) of the Charter; requests the government of Nigeria to take necessary measures to comply with its obligations under the Charter.

Done in Algiers, Algeria on 11 May 2000.