

27 April-11 May 2005
Communication No. 268/2003

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

ILESANMI
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: Ilesanmi v. Nigeria, Comm. 268/2003, 18th ACHPR AAR Annex III (2004-2005)
Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 713 (Malcolm D. Evans & Rachel Murray eds., 2009); (2005) AHRLR 48 (ACHPR 2005)

RAPPORTEUR

33rd Session: Commissioner Jainaba Johm

34th Session: Commissioner Jainaba Johm

35th Session: Commissioner Jainaba Johm

36th Session: Commissioner Jainaba Johm

37th Session: Commissioner Jainaba Johm

SUMMARY OF FACTS

1. The Complainant is an individual, a consultant with the Economic Help Project based in Abuja, Nigeria.
2. The Complaint was received at the Secretariat of the African Commission on 3 April 2002 and is against the Federal Republic of Nigeria which is a party to the African Charter on Human and Peoples' Rights.

3. The Complainant states that in 1999, he exposed the smuggling activities of several companies and individuals, and officials of the Customs and Excise, Police and various other officials to President Obasanjo of Nigeria and the Inspector General of Police.
4. The Complainant states that the smuggling activities include -: smuggling of narcotics and their modified forms, minerals, illegal arms, carcinogen bearing foods, expired, fake and counterfeit pharmaceuticals, tyres, textiles, steel products, electronic, electrical products, spare parts, foods, cars and other products.
5. The Complainant also claims that the smugglers are responsible for the assassinations of several persons including Chief Bola Ige, Nigeria's Attorney General and the Confidential Secretary to the Chief Justice of Nigeria.
6. The Complainant alleges that the activities of the smuggling syndicate have resulted into the shutting down of 41 textile mills, 8 auto assembly and other manufacturing plants, resulting into the dismissal of millions of workers and thereby impoverishing them. The smuggling activities have also resulted into the deaths of many people as a result of use of fake or expired drugs.
7. Through their smuggling activities the said smugglers he claims deprive Nigeria of about 101 trillion naira, annually.
8. As a result of his actions to expose the smuggling syndicate, the Complainant claims that his pregnant wife was assassinated on 8th July 1999. Furthermore, he was abducted and imprisoned and held at SCID, Panti, Yaba, Lagos under inhuman conditions between 31 August and 4 September 1999.
9. The Complainant also claims that whilst in detention he was served with poisoned food by Inspector Okoye under the order of CSP Bose Dawodu, who both demanded for 10,000 Naira for bail.
10. The Complainant further alleges that between 21 and 23 June 2000 he was abducted again by Police Commissioner Aniniru, Sergeant Joseph Akinola and Inspector Paul Ajayi of FCIBs who he claims were acting on behalf of the smugglers. He was imprisoned at the Divisional Police Headquarters in Lagos, Nigeria where he was denied water and food.

COMPLAINT

11. The Complainant alleges that the following Articles of the African Charter have been violated: Articles 2,3,4,5,12, 15,20,21,27,29 Procedure
12. On 8 April 2002, the Secretariat of the African Commission acknowledged receipt of the complaint and requesting for additional information from the complainant.

13. At its 33rd Ordinary Session held from 15 to 29 May in Niamey, Niger, the African Commission considered the complaint and decided to be seized of the matter.
14. On 10 June 2003, the Secretariat of the African Commission wrote informing the parties to the communication that the African Commission had been seized with the matter and requested them to forward their submissions on admissibility within '3 months.
15. At its 34th Ordinary Session held in Banjul, The Gambia from 6 to 20 November 2003, the African Commission examined this communication and decided to defer further consideration on the admissibility of the matter to the 35th Ordinary Session.
16. On 4 December 2003, the Secretariat wrote informing the parties to the communication of the African Commission's decision and requested them to forward their submissions on admissibility within two months.
17. At its 35th Ordinary Session held in Banjul, The Gambia, from 21 May to 4 June 2004, the African Commission examined the communication, heard submissions from the State and decided to defer further consideration on admissibility of the matter to its 36th Ordinary Session.
18. By Note Verbale dated 15 June 2004 addressed to the State and by letter bearing the same date address to the complainant, both parties were informed of the African Commission's decision.
19. At the 36th Ordinary Session of the African Commission held from 23 November to 7 December 2004 in Dakar Senegal, the African Commission considered the communication and deferred its decision to the 37th Ordinary Session
20. By Note Verbale of 13 December 2004 and letter of the same date the respondent State and the complainant respectively, were notified of the decision of the African Commission.
21. At its 37th Ordinary Session held in Banjul, The Gambia from 27 April to 11 May 2005, the African Commission considered the communication and declared it inadmissible.

LAW

ADMISSIBILITY

COMPLAINANT'S SUBMISSION ON ADMISSIBILITY

22. The complainant submits that all legal, legislative and logical local remedies have been exhausted, and without explaining, claims further that the procedure adopted by President Obasanjo and the government has been "unduly prolonged, apparently unfruitful and grossly ineffective". That President Obasanjo is being constantly fooled by false intelligence and security reports. He noted that only those who cannot handsomely bribe "settle" corrupt officials get caught - scape goats! He states that this

gives the impression that those indicted are the sacred cows of the Obasanjo's regime, the un-touchable merchants of death, whose activities have crippled the economy of Nigeria, even though they are close to the corridors of power.

23. He noted that this has led to an unprecedented increase in illicit arms smuggling, armed robberies, abduction, drug abuse and smuggling, miscellaneous consumer goods smuggling, petroleum products smuggling, drug money laundering politics, systematic deindustrialization of Nigeria, mass unemployment, a constantly devalued Naira, hyperinflation, infectious poverty levels, poor healthcare delivery, very poor and dilapidated infrastructure, infections official and informal corruption levels, low life expectancy, poor per capita income, low GDP, uncertainty, political/religious tension and relative insecurity of life and property in Nigeria.
24. He notes further that efforts of the Customs and the Police are cosmetic. That they advertise very attractive adverts or programmes on TV that deceive Nigerians that they are working. The culprits are not apprehended or prosecuted, so far they "settle" very well. The Police wildly extort money from commercial motorists. Bosses of the Police, Customs, NAFDAC and the NDLEA do this so as to attract more budgetary allocations. The President appears content with very attractive security reports. Officers lobby and bribe to get very lucrative postings and for sure-they pay returns.
25. The complainant notes further that the President has "not made good his promise since 1999 that there shall be no sacred cows and that he shall investigate and prosecute all the economic saboteurs, once he was notified". Apparently, the President is afraid to prosecute smugglers, drug barons and all those indicted.
26. He states that his late wife was assassinated to stop him in 1999 and he sued the suspects at the Lagos High Court in 1999 and he was frustrated out of court by Justice Ashiyanbi and Olugbani who corrupted Judges by suspiciously adjourning the matter for years without the suspects showing up in court. The Police illegally abducted him twice, first between August 31 and September 4, 1999 and served him poisoned food at Panti, Lagos. He was abducted again by the Police between June 21 and 23 2000 and starved for the period.
27. The complainant claims further that the Customs and Police collude with smugglers to defraud Nigeria. This sufficiently explains why they want him dead. In fact, they openly mock the effectiveness of President Obasanjo's approach to smuggling control. They claim that they "settle all the security chiefs, who they claim, settled the President too". Settlement day, according to them is every Friday. This gives an impression that Mr. President's AntiCorruption and Anti-Smuggling crusades constitute a mere farce! Adding that those in Aso Rock patronize smugglers.
28. He notes further that the security and democracy of Nigeria are undoubtedly seriously undermined by smuggling, which in effect, constitutes an absurd infringement upon the socio-economic and security rights of the peoples of the Federal Republic of Nigeria. This constitutes an infringement on articles 2,3,4,5, 6, 12, 15, 19, 20, 22, 23, 24, 27 and 29 of the African Charter 01] Human and Peoples' Rights.

29. He concluded by stating that in view of the strategic security and economic importance of Nigeria to Africa and the world, and the urgent need to avert an imminent state of anarchy in Nigeria, to be occasioned by a kind of impromptu anti-democratic chain of fission from aggrieved stakeholders within the federation, the ACHPR should, without delay, “save our souls by taking urgent action, which would force president Obasanjo to prosecute all those indicted”.

RESPONDENT, STATE’S SUBMISSIONS ON ADMISSIBILITY

30. The Respondent State submitted its arguments on admissibility at the 35th Ordinary Session of the Commission held in Banjul, The Gambia. The State noted that the, author of the communication is seemingly in quest for attention, noting that the communication is an

“episodic compilation of issues, lacking focus, depth and substantiation”.

31. The State argued that it would be misleading to attempt to dwell on the issues in the communication as such will convey a wrong and perhaps unintended signal to the author and others of his persuasion and inclination to unduly attempt taking advantage of situations, including the procedural provisions of well-meaning bodies like the African Commission.

32. The State noted that for a communication to pass the admissibility test under Article 56 of the African Charter it must meet the specific conditions, failure which the communication should be declared inadmissible. The State argues further that it is clear from the communication that the author has not exhausted local remedies as required under Article 56 (5). That the author merely asserts without evidence that he has availed himself of all available remedies.

33. The State notes that the communication lacks evidence of the involvement of the legal institutions as there is no indication that the courts of appellate jurisdiction in Nigeria have been seized of the matter, adding that to come to equity, the author must be clean. The State also notes that the author fails to demonstrate whether the “so called” human rights matters have gone before the Nigeria National Human Rights Commission. The State noted further that the Independent Corruption Practices Commission (ICPC), the Economic and Financial Crimes Commission were also not seized by the author, stating that the author should be encouraged to take the “right and adequate steps for intervention in Nigeria”.

34. The Respondent State argues that the author’s penchant to malign the Nigerian criminal justice system is a deliberate ploy to mislead the African Commission and take undue advantage of the procedures, noting that to say individuals are above the law is self-serving but totally unrealistic and unfounded. The State also argues that the communication is derogatory and insulting, noting that the State takes strong exception to the characterization of the Nigerian public functionaries and institutions as immoral, duplicitous, inept and corrupt and provocative that the author would be uncharitable and discourteous to claim the President was bribed.

35. The Respondent State finally requested the African Commission not to waste its valuable time on the communication, that it is unworthy of the efforts nor does it justify the resources that is invested in determining which human rights are in contention. That the author fails to invoke any provision of the Charter alleged to have been violated. The State submitted that the communication is seriously flawed and glaringly incompatible with the admissibility criteria in the African Charter African Commission's decision on admissibility
36. In the present communication, the complainant submits that he has complied with Article 56 of the African Charter that prescribes conditions dealing with admissibility. The Responding State however argues that the complaint does not meet two of the conditions set out in Article 56 of the African Charter, namely: Article 56(3) and Article 56(5).
37. Article 56 (3) provides that communications relating to human and peoples' rights referred to in Article 55 received by the Commission shall be considered if: "they not written is disparaging or insulting language directed against the State concerned and its institutions or to the [African Union]"
38. The author submitted in his complaint that the police and customs officials are corrupt, that they deal with drug smugglers, that they extort money from motorists and added that the President himself was corrupt and had been bribed by the drug smugglers. The Respondent State claims such language is insulting to the institutions of the State including the presidency ~nd provocative, and questions whether the African Commission would allow itself to be used by authors like this to use "unbecoming language to unjustly and baselessly vilify leaders"?
39. The operative words in sub paragraph 3 in Article 56 are "disparaging" and "insulting" and these words must be directed against the State Party concerned or its institutions or the African Union. According to the Oxford Advanced Dictionary, disparaging means to speak slightly of... or to belittle and insulting means to abuse scornfully or to offend the self respect or modesty of... The language must be aimed at undermining the integrity and status of the institution and bring it into disrepute.
40. To say an institution or person is corrupt or that he/she has received bribes from drug dealers, every reasonable person would lose respect for that institution or person. In an open and democratic society individuals must be allowed to express their views freely. However, in expressing these views due regard should be taken not to injure the reputation of others or impair the enjoyment of the rights of others. While the Commission strives to protect the rights of individuals it must strike a balance to ensure that those institutions established within States Parties to facilitate the enjoyment of these rights are also respected by the individuals. To expose vital state institutions to insults and disparaging comments like those expressed in the communication brings the institution to disrepute and renders its effectiveness wanting. In the light of the above, the African Commission finds that the language used in the communication as intended to bring the institution of the president into ridicule and disrepute and thus insulting.

41. The Respondent State also argues that the complainant has not exhausted local remedies as required under Article 56 (5) of the African Charter. The State submits that apart from not seizing the local courts, the complainant has not indicated that it brought the complaint to the National Human Rights Commission or to the Independent Corruption Practices

Commission. Article 56 (5) provides that communications relating to human and peoples' rights referred to in Article 55 received by the Commission shall be considered if they "... are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged".

42. The African Commission would like to deal with the submission of communications to bodies such as a National human rights Commission or the Independent Corruption Practices Commission as indicated by the State. The two institutions mentioned by the Respondent State are non-judicial institutions even though they can grant remedies. They are not part of the judicial structure of the Respondent State. While the African Commission would encourage complainants to seek redress from non-judicial bodies as well, they are not obliged to do so. The remedies required under article 56 (5) are legal remedies and not administrative or executive remedies.

43. Regarding the non-exhaustion of legal remedies the complainant simply states that he has exhausted "local, legislative and logical remedies" without informing the African Commission how. The only time he mentioned having gone to court is when he said his wife was killed and the case was adjourned several times. The Respondent State argues that the matters raised in the communication have never been brought before the local courts.

44. The principle that a person who has suffered a human rights violation must first exhaust his or her domestic remedies can be found in most international human rights treaties. International mechanisms are not substitutes for domestic implementation of human rights, but should be seen as tools to assist the domestic authorities to develop a sufficient protection of human rights in their territories. If a victim of a human rights violation wants to bring an individual case before an international body, he or she must first have tried to obtain a remedy from the national authorities. It must be shown that the State was given an opportunity to remedy the case itself before resorting to an international body. This reflects the fact that States are not considered to have violated their human rights obligations if they provide genuine and effective remedies for the victims of human rights violations.

45. The international bodies do recognize however, that in many countries, remedies may be non-existent or illusory. They have therefore developed rules about the characteristics which remedies should have, the way in which the remedies have to be exhausted and special circumstances where it might not be necessary to exhaust them. The African Commission has held that the local remedies to be exhausted must be available, effective and sufficient. If the existing domestic remedies do not fulfil these criteria, a victim may not have to exhaust them before complaining to an international body. However, the complainant needs to be able to show that the remedies do not fulfil these criteria in practice, not merely in the opinion of the victim or that of his or her legal representative.

46. If a complainant wishes to argue that a particular remedy did not have to be exhausted because it is unavailable, ineffective or insufficient, the procedure is as follows: (a) the complainant states that the remedy did not have to be exhausted because it is ineffective (or unavailable or insufficient) - this does not yet have to be proven; (b) the Respondent State must then show that the remedy is available, effective and sufficient; and © if the Respondent State is able to establish this, then the complainant must either demonstrate that he or she did exhaust the remedy, or that it could not have been effective in the specific case, even if it may be effective in general.

47. In the present communication, the complainant has failed to demonstrate that he attempted local remedies or that he was prevented from doing so by the Respondent State or that the local remedies are not available or are ineffective or have been unduly prolonged. The exceptions under Article 56(5) can therefore not apply to this communication.

For the above reasons, the African Commission declared the communication inadmissible.

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.