

Rapporteur: 24th Session: Commissioner Badawi
25th Session: Commissioner Badawi
26th Session: Commissioner Pityana
27th Session: Commissioner Chigovera

Summary of Facts:

1. The complainant is an NGO based in Nigeria and has observer status with the African Commission on Human and Peoples' Rights.
2. The complainant alleges the illegal deportation of a Nigerian National from The Gambia.
3. It is alleged that the deportee, Mr. Sule Musa, was a journalist with the *Daily Observer* a Gambian newspaper.
4. It is alleged that Mr. Sule Musa was arrested within the premises of his office by Corporal Nyang. After his arrest he was taken to the Bakau Police Station from where he was directed to surrender his International Passport. He was then driven home to pick his passport and afterwards taken to the Police headquarters in Banjul, and from there to the Immigration Department, where he was told he was being deported to go and face trials for crimes he committed in Nigeria.
5. It is alleged that on arrival at the airport on 9 June 1998, Mr. Sule Musa was neither allowed food, water or a bath until 10 June 1998 after he had been served with his deportation order for being an "undesirable alien".
6. Complainant alleges that Mr. Sule Musa was being deported for his writings in the *Daily Observer* on certain diverse issues concerning Nigeria, under the Military regime of General Sani Abacha.
7. It is alleged that upon his arrival in Nigeria there was no immigration or police officer to arrest him for the purported crimes he had committed in Nigeria.
8. Furthermore, the complainant alleges that Mr. Sule Musa was not allowed to take any of his personal effects before he was deported. Inevitably his property is in the Gambia while he is in Nigeria and cannot return as the deportation order still subsists.

Complaint:

9. The complainant alleges that the following Articles of the African Charter on Human and Peoples' Rights have been violated:

Articles 7, 9, 12(4), 2, 4, 5 and 15.

Procedure:

10. The complaint is dated 27 July 1998 and was received at the Secretariat of the Commission on 9 September 1998.
11. At the 24th ordinary session, the Commission decided to be seized of the complaint and parties were informed accordingly.
12. The Commission at its 25th ordinary session held in Bujumbura, Burundi, postponed consideration of the communication to the next session while requesting the Secretariat to investigate whether the complainant could have recourse to the local courts in the Gambia.
13. Letters were sent to the parties by the Secretariat requesting for additional information on the availability of local remedies but no response has been received.
14. Furthermore, the Secretariat established contact with the Attorney General of the Gambia and solicited her assistance. This resulted in a meeting on 10 March 2000, at the Secretariat of the Commission between the State Counsel in the Department of State for Justice and the Legal Officer at the Secretariat. The State Counsel promised to send their submissions on all the complaints but the submissions promised were not sent.

LAW

Admissibility

15. 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.*

16. The complainant had argued that no domestic remedies are available for Mr. Musa inside the Gambia as the deportation order was still subsisting. And in consequence that Mr. Musa is disabled in seeking redress by invoking any legal or administrative process.
17. The Commission observed that the victim does not need to be physically in a country to avail himself of available domestic remedies, such could be done through his counsel. In the instant case, it noted that the complaint was filed by a Human Rights

NGO based in Lagos, Nigeria. Rather than approach the Commission first, the complainant ought to have exhausted available local remedies in the Gambia. The Commission therefore concludes that the complainant has failed to comply with the provision of Article 56(5) of the Charter.

For the above reasons, the Commission

declares the communication inadmissible

Done in Algiers, Algeria on 11 May 2000