

239/2001 - Interights (on behalf of Jose Domingos Sikunda) / Namibia

Rapporteur:

29th Session: Commissioner Andrew R. Chigovera

30th Session: Commissioner Andrew R. Chigovera

31st Session: Commissioner Andrew R. Chigovera

Summary of Facts

1. The communication is submitted by Interights a human rights NGO based in the United Kingdom on behalf of Jose Domingos Sikunda
2. Mr. Sikunda is of Angolan descent but has been living in Namibia for 25 years.
3. The Complainant alleges that sometime in 2000, Mr. Sikunda was arrested and detained by Namibian authorities. No reasons were given for his arrest and detention.
4. It is alleged that on 24th October 2000 the high court of Namibia ordered the release of Mr. Sikunda from detention but that the government of Namibia declined to comply with the order.
5. It is also alleged that Mr. Sikunda's lawyers then sought to enforce the high court order and on 31st October the Judge issued a *rule nisi* directing the Minister to show cause why he should not be cited for contempt of the court order. The case was adjourned twice and on 12th January 2001 Judge Teek delivered his ruling recusing himself from the case without either party having applied for it.
6. The Complainant states that there is a pending court order restraining the deportation of Mr. Sikunda which will lapse on 1st February 2001; and that the Namibian authorities have indicated their preparedness to deport Mr. Sikunda to Angola whose government accuses Mr. Sikunda of being a UNITA rebel. The Complainant alleges that such an act will put Mr. Sikunda at real risk of torture and extra judicial death.

Complaint

7. The Complainant alleges a violation of **Articles 4, 5 and 12(4)** of the African Charter on Human and Peoples' Rights.

Procedure

8. The communication was received at the Secretariat of the Commission on 31st January 2001 by fax, a copy of which was forwarded to the Chairman of the African Commission requesting him to appeal (under Rule 111 of the Commission's Rules of Procedure) to

the Namibian government to refrain from taking any measures that may put the life of Mr. Sikunda at risk.

9. The Secretariat acknowledged receipt of the communication on 2nd February 2001 and requested the Complainant to furnish it with further information.
10. On 19th February 2001, the Chairman of the African Commission wrote to the Minister of Foreign Affairs of the Republic of Namibia expressing concern over the alleged deportation of Mr. Sikunda.
11. On 22nd February 2001, the government of Namibia responded to the Chairman's appeal declining it and stating that the actions of the Namibian government were legal and aimed at protecting the security of the country and its citizens.
12. On 12th March 2001 a copy of the above-mentioned written response was forwarded to the Complainant and they were reminded to furnish the Commission with further information.
13. On 21st March 2001, the Complainant responded to the request for further information stating that will revert back to the Commission with additional submissions and evidentiary material.
14. At its 29th ordinary session, the Commission decided to be seized of the Complaint.
15. On 23rd May 2001, the Secretariat conveyed the above decision to the parties and requested parties to furnish it with additional information on admissibility in accordance with Article 56 of the African Charter and forwarded a copy of the text of the Complaint to the Respondent State. The Parties were requested to present their written submissions to the Secretariat within three months of notification of the decision.
16. During his promotional visit to Namibia from 2nd to 7th July 2001, Commissioner Chigovera raised the matter of this Complaint with officials from the Ministries of Justice and Foreign Affairs and urged them to submit their written submissions to the Secretariat as soon as possible.
17. On 17th August 2001, the Parties were reminded to forward their written submissions to the Secretariat on or before the 23rd of August 2001.
18. On 18th and 21st September 2001, the Secretariat wrote to the Respondent State and the Complainant respectively reminding them to forward their submissions on admissibility.
19. On 24th September 2001, the Secretariat received a letter from Interights stating that they would not be able to forward their submissions for consideration at the forthcoming 30th session as there are elements missing from their submissions that have not been transmitted by the lawyers of the victims.

20. At its 30th ordinary session held in Banjul, the Gambia, the Commission considered the communication and decided to defer the matter to the 31st Ordinary Session to allow the Complainants forward their submissions on admissibility.
21. On 9th November 2001, the Parties were informed of the Commission's decision.
22. On 2nd January 2002, the Complainants were reminded to submit their written submissions on admissibility.
23. By email on 7th January 2002, the Complainants informed the Secretariat that they had sent a request for supplementary information to their colleagues in Namibia but had not yet heard from them and in the event that they do not hear from them they would actively consider sending a notification for discontinuance of the case.
24. On 19th March 2002, the Secretariat wrote enquiring as to whether the Complainants still wished to proceed with the communication and if that were the case to forward their written submissions on admissibility.
25. The Complainant on 20th March 2002 wrote informing the Secretariat that despite repeated attempts they had failed to secure a response from their colleagues at the National Society for Human Rights. The Complainants assured the Secretariat that if this situation does not change before the next session, then they would request the Commission to authorise them to withdraw the communication.

LAW

Admissibility

26. Article 56 of the African Charter governs admissibility. The most relevant provisions of that Article provide
Communications ... received by the Commission shall be considered if they:-
(5) *are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged*
27. The Respondent State argues that following refusal by the Minister of Home Affairs to honour the High Court decision on 24th October 2000 ordering Sikunda's release from detention, Sikunda's lawyers sought to enforce the Court order by an application to commit the Minister of Home Affairs for contempt of court.
28. The Respondent State submits that Interights submitted the present communication to the African Commission on 31st January 2001 whilst the matter of hearing the application of a *rule nisi* showing cause why the Home Affairs Minister should not be held in contempt of court was still pending before the High Court. Indeed High Court heard the matter on 1st February 2001 and delivered judgement on 9th February 2001, finding the Minister of Home Affairs in contempt of court. Therefore, the Respondent State argues, that Interights by submitting a complaint on 31st January 2001 had failed to meet the requirements of Article 56(5) of the African Charter.

29. The Complainants on the other hand have been repeatedly requested by the Commission to furnish their submissions on admissibility, especially on the question of exhaustion of domestic remedies but there has not been any response from them.
30. Thus from the information available to the Commission and principally from the copy of the judgement of the High Court of Namibia delivered on 9th February 2001; the Commission observes that the Complainant brought the matter before it prior to exhausting domestic remedies, indeed while the matter was still pending before the High Court of Namibia.

For these reasons, the Commission in conformity with Article 56(5) of the African Charter declares this Communication inadmissible for non-exhaustion of domestic remedies.

NOTE:

When the Chair of the Commission wrote to the Government of Namibia expressing concern over the alleged deportation of Mr Sikunda, the government responded stating that its actions were legal and aimed at protecting the security of the country and its citizens.

Following the decision that the Commission has come to, the Commission would like to state that in circumstances where an alleged violation is brought to the attention of the Commission and where it is alleged that irreparable damage may be caused to the victim, the Commission will act expeditiously appealing to the State to desist from taking any action that may cause irreparable damage until after the Commission has had the opportunity to examine the matter fully. In such cases the Commission acts on the facts as presented and it was therefore in this vein that the Commission wrote to the Minister of Foreign Affairs of the Republic of Namibia expressing concern over the alleged deportation of Mr. Sikunda.

*Done at the 31st Ordinary Session of the African Commission
held from 2nd to 16th May 2002 in Pretoria, South Africa*