

248/2002 Interights and World Organisation Against Torture/Nigeria

Rapporteur:

31st Session: Commissioner Dankwa

32nd Session:

33rd Session: Commissioner Dankwa

34th Session: Commissioner Dankwa

35th Session: Commissioner Dankwa

Summary of Facts

1. The complaint is filed by Interights and the World Organisation Against Torture/Organisation Mondiale Contre la Torture on behalf of individuals who requested anonymity as permitted under Article 56(1) of the African Charter.
2. In their complaint, the complainants allege that between May 1999 and March 2002, the Federal Republic of Nigeria has engaged in extra-judicial executions, state-sponsored violence and impunity.
3. The complainants allege that during the said period, the Federal Republic of Nigeria has directly, through its armed forces, members of its law enforcement agencies and similar officials of the state, participated or been complicit or implicated in the extra-judicial execution of cumulatively over ten thousand persons at different locations in Nigeria.
4. They allege that the Federal Republic of Nigeria has directly, through its armed forces, members of its law enforcement agencies and similar officials of the state, participated or been complicit or implicated in the verifiable and forcible internal displacement of over one million persons in Nigeria.
5. They allege that the Federal Republic of Nigeria has systematically and deliberately in all the cases of extra-judicial execution and forcible displacement, denied the victims access to remedies in violation of its obligations under the African Charter. It has, by reason of all these violations over a period of more than two and a half years, committed systematic, serious and massive violations of human and peoples' rights recognised by the African Charter on Human and Peoples' Rights which is domestic law in Nigeria.
6. The authors of the complaint allege that they have independently verified the allegations described in the complaint. They assert that the epidemiology of the violations described in the complaint precluded the requirement to exhaust domestic remedies in Nigeria. They cited the decision of the Commission on admissibility in the Communication 25/89 *Free Legal Group et al v. Zaire* wherein the Commission held that the requirement of exhaustion of local remedies need not be applied literally "in cases where it is impractical or undesirable for the individual complainant

to seize domestic courts in the cases of each individual complainant. This is the case where there are a large number of individual victims. Due to the seriousness of the human rights situation as well as the great numbers of people involved, such remedies as might theoretically exist in the domestic courts are, as a practical matter, unavailable or, in the words of the Charter, unduly prolonged.”

Complaint

7. The Complainant alleges violation of Articles 1, 2, 3, 4, 5, 7(1), 12 (1), 13(1), 13(2), 14, 15, 16, 17(1), 17(2), 18, 25 and 26 of the African Charter on Human and Peoples’ Rights.
8. In their prayers for redress, the complainants request the Commission to:
 - undertake an independent investigation and verification of the violations being complained of;
 - request, pending its decision on this communication, its Special Rapporteurs on Human Rights of Women, on Summary, Arbitrary and Extra-Judicial Executions, and on Prisons to undertake a joint investigation of violence, extra-judicial executions and related violations in Nigeria and to request the government to accede to the conduct of such an investigation;
 - request the government to verify the number and manner of death of all victims of extra-judicial executions during the period covered by the communication;
 - request the government to provide adequate and appropriate remedies to the victims of violations alleged in this communication, including, in particular, the prosecution of all persons implicated in the violations;
 - request the government to adopt and implement such measures as may be indicated by the Commission to prevent recurrence of the violations complained of in this communication; and
 - request the government to report periodically to the Commission on steps taken by it to comply with the finding and remedies indicated by the Commission.

Procedure

9. The Complaint, dated April 2002, was sent on 4th April 2002, and received at the Secretariat on 5th April 2002.
10. At its 31st Ordinary Session held from 2nd – 16th May 2002 in Pretoria, South Africa, the African Commission considered the complaint and decided to be seized thereof.
11. On 28th May 2002, the Secretariat wrote to the complainants and Respondent State to inform them of this decision and requested them to forward their submissions on admissibility before the 32nd Ordinary Session of the Commission.
12. At its 32nd, 33rd and 34th Ordinary Sessions, the communication was deferred to enable the parties make submissions on admissibility.

13. At its 35th Ordinary Session held from 21st May to 4th June 2004 in Banjul, The Gambia, the African Commission considered this communication and declared it inadmissible.

LAW

Admissibility

14. Article 56 (5) of the African Charter requires that "*a communication be introduced subsequent to exhaustion of local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is unduly prolonged*".
15. The Complainants' claim that theirs is a special case in which they assert that, by the jurisprudence of the African Commission, the epidemiology of the violations described precluded the requirement to exhaust domestic remedies. Despite this, however, the African Commission had decided, at its 32nd, 33rd and 34th Ordinary Sessions, that both parties should forward their written submissions on admissibility.
16. Despite several reminders, the Complainants, in particular, have not furnished their written submissions on admissibility. Consequently, the African Commission holds that the Complainants have not shown if they have exhausted local remedies as required by the African Charter.

For these reasons, and in accordance with Article 56(5) of the African Charter, the African Commission,

Declares this communication inadmissible due to non-exhaustion of local remedies.

*Done at the 35th Ordinary Session held in Banjul, The Gambia
from 21st May to 4th June 2004*