

TANZANIA / JUDGMENT

femi falana v republic of cameroon communication 72719 2022 achpr 5 9 november 2022

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9 November 2022

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Decision of the African Commission on Human and Peoples' Rights on Seizure Communication 727/19- Femi Falana v. Republic of Cameroon Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat), received a Complaint on 26 October 2018 from Femi Falana (the Complainant), on behalf of 53 Cameroonian refugees and asylum seekers¹ (the Victims) who were deported from Nigeria on 26 January 2018.
2. The Complaint is submitted against the Republic of Cameroon (the Respondent State), State Party to the African Charter on Human and Peoples' Rights (the African Charter).²
3. The Complainant submits that at the request of the Respondent State, authorities in Nigeria illegally and unfairly returned the Victims to the Respondent State.
4. The Complainant alleges that the "returnees are mostly leaders of the people of Southern Cameroon... who have been living in Nigeria with their families for years." He states that some of them have been granted political asylum while others were asylum seekers in Nigeria.
5. The Complainant avers that on 7 January 2018, the Victims assembled in Abuja to discuss the problems being encountered by several Cameroonian asylum seekers in Nigeria. He adds that before the meeting started, security personnel from Nigeria arrested the Victims and took them to an underground detention centre in Abuja.
6. The Complainant submits that while in detention, the Victims were denied access to their family members, lawyers and doctors. The Complainant states that, further to instructions from the Victims, he represented them before the Federal High Court in Abuja, contesting their arrest and detention.
7. The Complainant avers that while the case was pending before the Court, their lawyers received information of the plan to deport the Victims to Cameroon, and they rushed to the Federal High Court in Abuja to stop the "illegal plan." He adds that they also reached out to

the Comptroller-General of Immigration, the Minister of Foreign Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Nigeria. 1 The initial submissions of the Complainant indicated that the Complaint was being submitted on behalf of 47 Cameroonian refugees and asylum seekers. In a subsequent submission, the Complainant amended this number to 53 refugees and asylum seekers, and listed their names. 2 The Republic of Cameroon ratified the African Charter on 20 June 1989.

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8. The Complainant alleges that despite a letter from the UNHCR reminding Nigeria of its legal obligation under international law not to deport the Victims, the Respondent State "pressurized" Nigeria to hand over the refugees. He states that Cameroonian security agents forcefully took the Victims on 26 January 2018, and that the Victims are being held in incommunicado detention.
9. The Complainant avers that Nigeria does not have an extradition agreement with Cameroon, and that the deportation therefore occurred outside the ambit of the extradition laws of Nigeria and Cameroon. He further avers that the Respondent State violated the Victims' right to enter, reside, seek and obtain asylum in Nigeria, in violation of the African Charter and other legal instruments to which the Respondent State is party.
10. The Complainant submits that the Victims "are the leaders of the movement agitating for the creation of the republic of Ambazonia from Cameroon". He further submits that in 2002, they filed a suit at the Federal High Court in Abuja to determine whether the people of Southern Cameroon are entitled to self-determination, which the Court decided to refer to the International Court of Justice.
11. The Complainant alleges that although the Victims are civilians, they are being tried before a military tribunal. Further, he states that the Government without any investigation, announced that the Victims would be tried for terrorism. The Complainant adds that a Special Military Tribunal has been specifically constituted for the purpose of prosecuting them.
12. The Complainant alleges that the trial commenced on 10 January 2019, and that their lawyers who are based in Nigeria have been denied access to them as well as the opportunity to defend them. However, in a subsequent submission, the Complainant indicates that he is representing the Victims before the Special Military Tribunal in Cameroon.
13. In his latest submission, the Complainant avers that only ten (10) of the Victims were charged before a Special Military Tribunal, while the remaining Victims have not been charged with any offence, although they are being held incommunicado since January 2018.

14. The Complainant submits that in two separate judgments delivered on 1 March 2019,³ the Federal High Court in Abuja declared that the deportation of the Victims from Nigeria was illegal and unconstitutional, and requested the Nigerian Government to pay them compensation and bring them back to Nigeria. The Complainant concludes that domestic remedies available in Nigeria have been exhausted.
15. The Complainant submits that being refugees and asylum seekers in Nigeria, the Victims are not required to exhaust domestic remedies in Cameroon. He further states that "the quasi-judicial process in Cameroon is weak, unfair, corrupt, politicised and manipulative," and that the instant case is of a "come for your assured judgment" which is akin to judgment without justice". Articles alleged to have been violated
16. The Complainant alleges violation of Articles 5, 6, 7, 11, and 12 of the African Charter.
Prayers
17. The Complainant requests the African Commission on Human and Peoples' Rights (the African Commission) to:
 - a. Find a violation of Articles 5, 6, 7, 11, and 12 of the African Charter;
 - b. Undertake an in-depth study, based on the "series of serious" and "massive" violations";
 - c. Urgently hold an extra-ordinary session to address the illegal and unfair return of the Victims, and the continuing violations of their rights;
 - d. Conduct an official visit to the Respondent State with the relevant rapporteurs and put pressure on the authorities to immediately release the Victims from unlawful detention and end the "politically motivated trial" of naturalised Nigerians, refugees and asylum seekers;
 - e. Find that the continued detention, mistreatment and unfair trial of the Victims by the Respondent State amounts to cruel and degrading treatment; f. Pursuant to Rules 84 (2) and 118 (3) & (4) of the Rules of Procedure, refer the matter to the African Court on Human and Peoples' Rights (the African Court);
 - g. Adopt Provisional Measures to:
 - immediately stop the "mistrial" of the Victims before a military tribunal and return them to Nigeria to re-join their families, pending a decision on the Communication; and
 - Provide assurances and guarantees about the safety of the Victims. Procedure
18. The Secretariat received the Complaint on 26 October 2018. Between 16 November 2018 and 22 July 2019, multiple correspondences were exchanged between the Secretariat and the Complainant, for requisite clarifications and additional information, in accordance with the applicable Rules of Procedure of the Commission.

19. During its 65 th Ordinary Session, the Commission examined the Complaint and decided to be seized thereof and to grant the requested Provisional Measures, but declined the request for referral of the Complaint to the African Court.
20. On 11 November 2019, the parties were notified of the Commission's decision, with a request to the Complainant to file written arguments and evidence on the Admissibility of the Communication within two months of notification in terms of Rule 105(1) of the 2010 Rules of Procedure. The Provisional Measures issued by the Commission were also sent to the State and the Complainant respectively on 11 November 2019 and 22 November 2019.
21. Between the 27th Extra-Ordinary Session and its 72nd Ordinary Session, the Commission deferred consideration of the Communication, during w hich period the Secretariat informed the parties by correspondence of 8 May 2021, that the Commission was yet to make a determination on the Communication, but that the deadline for submission on the Admissibility of this Communication expired on 11 January 2020.
22. Rule 105(1) of the Commission's Rules of Procedure (2010) establishes that when the Commission has decided to be seized of a Communication, it shall request the Complainant to present arguments on Admissibility within two (2) months.
23. Rule 113 provides that when a deadline is fixed for a submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension of time for a period not longer than one
(1) month.
24. To d ate, and more than two (2) years after the stipulated deadline, the Complainant has not (i) made any submissions on Admissibility and (ii) has not requested for an extension of time to submit.
25. The Commission considers that the Complainant's failure to submit observations on Admissibility w ithin the prescribed timeline or at all, or indeed to seek an extension of the time as provided by the Rules of Procedure, amounts to want of diligent prosecution of this Communication. Consequently, in line with its jurisprudence 4, the Commission finds that the Complainant has shown no interest in prosecuting this Communication. 4 See e.g. Communication 387/10 - Kofi Yamagnane v. Republic of Togo, Communication 407/ 11 - Artur Margaryan and Artur Sargsyan v. Republic of Kenya, Communication 427-12- SERAP ~ ~- of Daniel Nsofor and Osayinwinde Agbomien) v. Federal Republic of Nigeria, Communic)l~::~c5-gt!'f 1i,S~
- Mohammed Ramadan Mahmoud Fayad Allah v. Arab Republic of Egypt, and C&~\n ~G~ 612/16 - Ahmed Mohammed Aly Subaie v. Arab Republic of Egypt. f \!t~ I!;\a,, , "%;\ ~\; ~ I \'; .. '~::~ 7 -...~ 4/' / , . . ----~ _.. ~ Decision of the Commission

26. In view of the above, the Commission decides to strike out the Communication for lack of diligent prosecution. Done in Banjul, The Gambia, during the 73rd Ordinary Session of the African Commission on Human and Peoples' Rights, 20 October to 09 November 2022
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Prepared on 14 October 2026 · Esheria