

TANZANIA / JUDGMENT

kenyatta and another represented by innocence project africa v republic of kenya communication 46414 2014 achpr 5 14 march 2014

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Decision of the African Commission on Human and Peoples' Rights on Seizure Communication 464/14 –Uhuru Kenyatta and William Ruto (represented by Innocence Project Africa) v. Republic of Kenya Summary of the Complaint

1. This Complaint was received by the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 19 February 2014, filed by Innocence Project Africa (the Author), acting on behalf of Uhuru Kenyatta and William Ruto, the President and the Deputy President respectively of the Republic of Kenya (the Victims).
2. The Complaint is submitted against the Republic of Kenya (the Respondent State), State Party to the African Charter on Human and Peoples' Rights (the African Charter).¹
3. The Author avers that the Complaint is a public interest application, and therefore, the Author has legal standing and capacity to bring this cause of action which is seeking to protect the sovereignty of the Respondent State, the African Charter, as well as the civil liberties and constitutional rights of the Victims on the legality of their indictment by the International Criminal Court (ICC).
4. The Author urges the African Commission on Human and Peoples' Rights (the Commission) to act with speed and urgency to restrict, prohibit and restrain the Respondent State from violating and denying the Victims their constitutional rights and the right of being tried by a "jury of their peers" in their own country, assuming without admitting that they committed any war crimes.

5. The Author contends that the Respondent State as a member of the African Union (AU) has an obligation to protect its citizens. The Respondent State will be in violation or has violated the Decision of the Assembly of Head of State and Government on Africa's Relationship with the ICC² by continually cooperating with the ICC to "trample under" the individual and constitutional rights of the two public officials and it defeats the fight to eradicate all forms of colonialism from Africa.
6. The Author submits that the institutions within the Respondent State which are responsible in "aiding and abetting the violations" of the rights of the Victims are the Parliament, Ministry of Justice and the Ministry of Foreign Affairs. The reason being that Parliament failed to set up an independent inquiry to investigate and identify the actual perpetrators of the 2007 post-1 elections violence for possible prosecution; Ministry of Justice failed to deliberately initiate a credible and independent inquiry and the Ministry of Foreign Affairs failed to make the necessary representation before international or regional bodies.
²http://www.iccnw.org/documents/Ext_Assembly_AU_Dec_Decl_12_Oct_2013.pdf (accessed on 02 March 2014)
7. The Author states that there has been no official complaint from the Respondent State against any of its citizens especially the Victims therefore, it is doubtless "sickening" that the Respondent has allowed the ICC to assume its sovereign responsibilities of becoming the final arbiter of judicial matters for crimes allegedly committed on Respondent State's soil.
8. The Author avers further that the action of the ICC to initiate an investigation *proprio motu* is based on information gathered from private individuals, which has the potential to be prejudicial, sentimental subjective and biased. Further the purported indictment for war crimes and crimes against humanity against the Victims is nothing but a "fishing expedition" as demonstrated by the recent pronouncement by the ICC that it does not have sufficient evidence to proceed with trial and therefore needs further investigation although the Respondent State knew of such "charade" by the ICC or had reason to know, it did nothing absolutely to defend the rights of its two citizens.
9. The Author avers further that lack of affirmative action taken by the Respondent State to protect the rights of the Victims as provided for under its Constitution, shows clearly that the "Respondent is part of the ploy" or is aiding and abetting the ICC to unduly violate the rights of the Victims.
10. The Author alleges that the Respondent State is responsible for the public humiliation, harassment and "demonization" the Victims have been subjected to whilst aware that the Victims are innocent, with the right to be presumed innocent until the contrary is proven. Moreover, it is alleged that the charges are politically motivated.

11. The rights allegedly violated by the Respondent State are rights to a free and fair trial by a 'jury of their peers' and failure on its constitutional powers to establish an independent commission or tribunal to investigate alleged human rights violations and extra-judicial killings that occurred post 2007 elections.
12. The Author alleges that in the effort to exhaust local remedies, the Government Institutions of the Respondent State were engaged, and requested to take corrective actions to protect the rights of the Victims without success.
13. The Author states that the Complaint has not been referred to any other international settlement body. 2 Articles alleged to have been violated
14. The Author alleges violation of Articles 2, 3, 4, 5,6, 7, 12, 14, 16, 19, 20(1) and 28 of the African Charter. Prayers
15. The Author requests the Commission in accordance with Rule 79 of its Rules of Procedure to issue:
 - a. An order as specifically provided for by law for the Respondent State to honour, respect and abide by the recent AU denunciation of the ICC and stay all further engagements, actions and communications with the ICC;
 - b. An Interim Order, when necessary or at the volition of the Commission given the urgency and severity of the matter, to urgently hear this matter and make the necessary determination as in keeping with law;
 - c. Order the Respondent State to adhere to and abide by the tenets, spirit and intent of its own Constitution and thereby enact the requisite legislation for the creation of an independent body or commission that will investigate and prosecute, if any, alleged violators of any crimes committed under the Rome Treaty that was initially ratified by Parliament and domesticated as part of its laws and
 - d. Grant unto Applicant all and any further relief, which although not specifically pleaded herein this Application, but which the Commission may deem just, legal and equitable as in keeping with the rules of the Commission and other applicable international human rights instruments Procedure
16. The Secretariat received the Complaint on 10 January 2014 and acknowledged receipt of the same on 16 January 2014. After review of the Complaint, the Secretariat discovered that the Complaint was unclear, and therefore wrote a letter requesting clarification on 11 February 2014. The Secretariat received an amended copy of the Complaint on 19 February 2014, and acknowledged receipt of the same on 26 February 2014. Analysis of the Commission on Seizure

17. The Commission finds that the Complaint contains disparaging and insulting language, in contravention of Article 56(3) of the African Charter, which sets out the basis on which the Commission shall consider Communications which are submitted to it under Article 55 of the Charter.
 18. The Complaint contains expressions such as: “Sickening”; “Charade”; “the Respondent is part of the ploy”; “trample under”; “fishing expedition”; “demonization” which in the view of the Commission are disparaging and insulting.
 19. In addition, the Author has failed to indicate any steps taken to exhaust domestic remedies nor provided grounds alleging the impossibility or unavailability of domestic remedies as provided under Rule 93 (2) (i). Complaint merely addressed Rule 93(2)(f) on ‘public authority that has taken cognisance of the alleged situation alleged’.
 20. Further the Author has failed to show a link between the Articles of the African Charter allegedly violated and the account of act or situation complained of, therefore, failing to reveal a prima facie violation of the African Charter.
 21. To conclude, the Commission is of the view that for a Complaint of this nature, consent of the Victims should have been sought and signatures of the Victims placed on the Complaint prior to its submission to the Secretariat. Decision of the Commission on Seizure
 22. Based on its analysis, the African Commission on Human and Peoples’ Rights decides not to be seized of this Communication because it does not comply with Article 56 of the African Charter and does not fulfil the criteria for seizure provided under Rule 93 (2) of the Commission’s Rules of Procedure. Done in Banjul, The Gambia this 15th Extra-Ordinary Session held from 07 to 14 March 2014 4
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