

11 May 2000 Communication No. 209/97

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS Twenty-Seventh Ordinary
Session 27 April - 11 May 2000**

AFRICA LEGAL AID

v.

THE GAMBIA

DECISION

BEFORE: CHAIRMAN: Professor E.V.O. Dankwa

VICE CHAIRPERSON: Mrs. Julienne Ondziel-Gnelenga

COMMISSIONERS: Professor Isaac Nguema, Dr. Hatem Ben Salem, Mr. Kamel
RezagBara, Dr. Nyameko Barney Pityana, Mr. Andrew Ranganayi Chigovera, Mrs. Vera
Mlangazuwa Chirwa, Mrs. Jainaba Johm

Citation: Africa Legal Aid v. Gam., Comm. 209/97, 13th ACHPR AAR Annex V (1999-2000)

Publications: IHRDA, Compilation of Decisions on Communications of the African Commission On
Human and Peoples' Rights Extracted from the Commission's Activity Reports 1994-2001,
at 121 (2002); Documents of the African Commission on Human and Peoples' Rights, Vol.
2, at 186 (Malcolm D. Evans & Rachel Murray eds., 2009); (2000) AHRLR 119 (ACHPR
2000)

RAPPORTEUR

23rd Ordinary Session: Commissioner Badawi

24th Ordinary Session: Commissioner Badawi

25th Ordinary Session: Commissioner Badawi

26th Ordinary Session: Commissioner Pityana

27th Ordinary Session: Commissioner Chigovera

SUMMARY OF FACTS

1. The communication was submitted by Africa Legal Aid, an NGO that has observer status with the Commission, on behalf of Mr Lamin Waa Juwara, a Gambian national.
2. The Complainant alleges that Mr Juwara left his house on 1st of February 1996, but did not return home that day.
3. On the following day, that is 2nd February 1996, Mrs Juwara, the Complainant's wife, learnt through newspaper reports that her husband had been detained. Mrs Juwara went to the Regional Administrative Office where her husband was reportedly detained and was told by the Officer in Charge of the police station that Mr Juwara had been transferred to the Upper River Division Prison.
4. The complainant also states that Mr Juwara had been an independent candidate during the legislative elections which had taken place before the 1994 military coup in The Gambia and that he had been arrested several times since the coup d'etat.

COMPLAINT

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

Articles 6, 9 (1), (2), (3) and 4 of the Charter, as well as Article 5 of the International Covenant on Civil and Political Rights.

PROCEDURE

6. The Communication was sent to the Secretariat of the Commission by fax dated 23rd October 1997 and by post.
7. The Secretariat acknowledged receipt of the communication on 27th October 1997 and requested the complainant to provide additional information.
8. On 30th January 1998, the complainant replied, highlighting the allegations that Mr Juwara who had been arrested and was probably detained at the Upper River Division prison had not been charged or brought before a court of law. Furthermore, no one knew for sure the whereabouts or the condition of Mr Juwara.
9. The complainant therefore argues that the provisions of Article 56(5) of the Charter concerning the exhaustion of local remedies is inapplicable in this case since no charges had been brought against the detainee and, consequently, he could not have access to any remedy.
10. At its 23rd Session held from 20 – 29 April 1998, in Banjul (The Gambia), the Commission, having been informed by the Respondent State that Mr Lamin Waa Juwara had been released, decided to suspend a decision to be seized of the communication until the 24th Session. It further requested the Secretariat to inquire as to the veracity of the statement of the State Party, as well as find out as to whether the petitioner would like to pursue the case, in the event that Mr Juwara's release were to be confirmed.

11. The Secretariat complied with the directives given by the Commission sitting at its 23rd ordinary session.
12. Consideration of the communication was successively deferred at the 24th, 25th and 26th ordinary sessions and the parties informed accordingly.
13. The matter was taken up by the Secretariat of the Commission in a meeting on 10 March 2000, with the State Counsel in the Department of State for Justice, The Gambia. The State Counsel promised to meet the State Party's obligation as requested.

LAW ADMISSIBILITY

14. 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.”

15. The Commission reviewed the case and noted that the complainant has not satisfied the requirement for exhaustion of local remedies as stipulated in the aforementioned provision.

FOR THE ABOVE REASON, THE COMMISSION declares the communication inadmissible.

Done in Algiers, Algeria on 11 May 2000.