

A last resort in cases of wrongful detention and deportation in Africa

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Esmaila Connateh was one of an estimated 126,247 foreigners deported en masse from Angola in 2004. No arrest warrants were issued, nor reason given for the arrests. Their official documents were confiscated. Property was confiscated or left behind. Most were held for weeks, some for months, in detention camps that had been used to house animals and remained filled with animal excrement. There was no medical attention, little food and poor sanitation. No one was afforded access to the court system to challenge their arrests, detention or conditions of confinement.

Without any viable alternative forum to address these human rights violations, the Institute for Human Rights and Development in Africa filed a complaint on their behalf with the African Commission on Human and Peoples' Rights. The Commission was established by the African Charter on Human and Peoples' Rights to address violations of the rights set out in the Charter.

In considering Esmaila Connateh's case, the Commission weighed the alleged violations of the Charter, reaching a decision on the merits as to each. With regard to Article 6 of the Charter (focusing on detention), the Commission found: "The prohibition of arbitrary detention includes prohibition of indefinite detention and arrests and detention 'based on ethnic grounds alone.'" As there was no evidence that "victims were shown a warrant or any other document relating to the charges under which the arrest were being carried out", the arrests and detentions were arbitrary, and Angola was in violation of Article 6. In other cases addressing arbitrary arrest and detention, the Commission has made it clear that "[a]rbitrariness is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law." In short, the Commission recognises that the laws of a particular country may themselves be unreasonable and that they will look beyond local statutes to determine the propriety of an arrest.

The Commission also found that Angola's conduct violated Article 12 concerning freedom of movement and residence: "Although African States may expel non-nationals from their territories, the measures that they take in such circumstances should not be taken at the detriment of the enjoyment of human rights... deportations [should] take place in a manner consistent with the due process of law. ... the

situation as presented by the Complainant did not afford those expelled due process of law for protection of the rights that have been alleged to be violated by the Respondent State and that they were not allowed access to the remedies under domestic law to at least challenge, if not reverse, their expulsion." In broad terms, the Commission held that mass expulsion through a "government action specially directed at specific national, racial, ethnic or religious groups is generally qualified as discriminatory in the sense that none of its characteristics has any legal basis..." The Commission then explained the rationale for its decision: "African States in general and the Republic of Angola in particular are faced with many challenges, mainly economic. In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken at the detriment of the enjoyment of human rights."

Winning a case before the Commission often has the feel of a hollow victory as the Commission decisions are 'recommendations' only and are often simply ignored. The Angolan government not only ignored the Commission's findings but subsequently repeated the offence. However, the Commission opinion should not be ignored. Its recommendations provide NGOs and other states with opportunities to put pressure on an offending state to comply with human rights norms. They also provide some value as precedents for future Commission decisions, while contributing to the ever-growing body of international human rights law.

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For more information on the decisions discussed here, and all other Commission decisions, please see the African Human Rights Case Law Analyser at <http://caselaw.ihra.org/acmhpr/>. See also two longer articles by the authors at www.ryanwhaley.com/attorneys/matthew-kane/