

27/89, 46/91, 49/91, 99/93 Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates) Commission Internationale des Juristes (C.I.J) Union Inter africaine des Droits de l'Homme/Rwanda

FACTS

Communication 27/89 alleges the expulsion from Rwanda of Burundi nationals who had been refugees in Rwanda for many years (Bonaventure Mbonuabucya, Baudouin Ntatundi, Vincent Sinarairaye and Shadrack Nkunzwenimana). They were told on 2 June 1989 that they had a month to leave the country. The reason given for their expulsion was that they were a national security risk due to their "subversive activities". The refugees were not allowed to defend themselves before a competent court.

Communication 46/90 alleges arbitrary arrests and summary executions have occurred in Rwanda.

Communication 49/91 alleges the detention of thousands of people in various parts of the country by the Rwandan security forces. These arrests have been made on the basis of ethnic origin and peaceful political activities. The communication states that over 1000 people including women, children and the aged are held in deplorable conditions. A large number of villages have been destroyed and villagers, mostly Tutsis, have been massacred.

Communication 99/93 alleges serious and massive violations between October 1990 and January 1992. A report was submitted at the same time detailing such violations as widespread massacres, extrajudicial executions and arbitrary arrests against the Tutsi ethnic group.

PROCEDURE

Communication 27/89 was submitted on 22 June 1989 by Organisation Mondiale contre la Torture and Association Internationale des Juristes DThetamocrates. The letter of the Free Legal Assistance Group was dated 17 March 1989, that of the Austrian Committee against Torture dated 29 March 1989, that of the Centre Haitien dated 20 April 1989.

The Commission was seized of the communication at the 6th Ordinary Session in October 1989.

On 14 March 1990 the Secretariat of the Commission notified the Ministry of Foreign Affairs of Rwanda.

From 1990 to 1995, the Commission attempted unsuccessfully to send a mission to Rwanda in order to carry out investigations on this cases.

Communication 46/90 was submitted by the International Commission of Jurists on 16 October 1990.

On 6 November 1990 a notification was sent to the Ministry of Foreign Affairs by registered mail.

At the 10th Ordinary Session, in October 1991, the communication was declared admissible. The Ministry of Foreign Affairs was notified on this decision on 23 October 1991.

Communication 49/91 was submitted by the Organisation Mondiale Contre la Torture (OMCT) on 28 November 1990.

Communication 99/93 was submitted by Union Interafricaine des Droits de l'Homme on 20 March 1993.

From 1993 to 1995, various letters and notifications were sent to Rwanda, to which there was no response from the government.

LAW Admissibility

It appears as stated under Article 58 of the African Charter, the communications 27/89, 46/90, 49/91 and 99/93 against Rwanda reveal the existence of a series of serious or massive violations of the provisions of the African Charter.

Article 56 of the African Charter requires that complainants exhaust local remedies before the Commission can take up a case, unless these remedies are, as a practical matter, unavailable or unduly prolonged. The requirement of exhaustion of local remedies is founded on, amongst others, the principle that a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international tribunal.

In accordance with its earlier decisions on cases of serious and massive violations of human rights, and in view of the vast and varied scope of the violations alleged and the large number of individuals involved, the Commission holds that remedies need not be exhausted and, as such, declares the communications admissible.

For the above reasons, the Commission declared the communications admissible.

The Merits

The main goal of the communications procedure before the Commission is to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the state concerned, which remedies the prejudice complained of. A pre-requisite for amicably remedying violations of the Charter is the good faith of the parties concerned, including their willingness to participate in a dialogue.

In the present case, there has been no substantive response from the Government of Rwanda, despite the numerous notifications of the communications sent by the African Commission. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the complainant and treat those facts as given (See, for example, the decisions of the Commission on communications 59/91, 60/91, 64/91, 87/93 and 101/93). This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. The fact that the Government of Rwanda does not wish to participate in a dialogue obliges the Commission to continue its consideration of the case regrettably on the basis of facts and opinions submitted by only one of the parties.

Article 2 of the Charter reads:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group...national or social origin..."

There is considerable evidence, undisputed by the government, that the violations of the rights of individuals have occurred on the basis of their being Burundian nationals or members of the Tutsi ethnic group. The denial of numerous rights to individuals on account of their nationality or membership of a particular ethnic group clearly violates Article 2.

Article 4 of the Charter reads:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

The massacre of a large number of Rwandan villagers by the Rwandan armed forces and the many reported extra judicial executions for reasons of their membership of a particular ethnic group is a violation of Article 4.

Article 5 of the Charter reads:

"Every individual shall have the right to the respect of dignity inherent in a human being...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The conditions of detention in which children, women and the aged are held violates their physical and psychological integrity and therefore constitutes a violation of Article 5.

Article 6 of the Charter reads:

"Every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

The arrests and detentions of the Rwandan Government based on grounds of ethnic origin alone, in light of Article 2 in particular, constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6.

Article 12 of the African Charter reads:

"3. Every individual shall have the right, when persecuted to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions." 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law."

This provision should be read as including a general protection of all those who are subject to persecution, that they may seek refuge in another state. Article 12.4 prohibits the arbitrary expulsion of such persons from the country of asylum. The Burundian refugees in this situation were expelled in violation of Articles 2 and 12 of the African Charter.

Article 12.5 of the African Charter reads:

"The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

There is ample evidence in this communication that groups of Burundian refugees have been expelled on the basis of their nationality. This constitutes a clear violation of Article 12.5.

Article 7.1 of the Charter reads:

"Every individual shall have the right to have his case heard. This comprises: (a) The right to an appeal to competent national organs against acts violating his fundamental rights..."

By expelling these refugees from Rwanda, without giving them the opportunity to be heard by the national judicial authorities, the government of Rwanda has violated article 7.1 of the Charter.

The African Commission is aware of the fact that the situation in Rwanda has undergone dramatic change in the years since the communications were introduced. Furthermore, the Commission has to rule on the facts which were submitted to it.

FOR THE ABOVE REASONS, THE COMMISSION

Holds that the facts constitute serious or massive violations of the African Charter, namely of Articles 4, 5, 6, 7, 12.3 and 12.4 and 12.5 of the Charter. urges the government of Rwanda to adopt measures in conformity with this decision.

Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1996.