

25/89, 47/90, 56/91, 100/93 World Organisation Against Torture, Lawyers' Committee
for Human Rights, Les Témoins de Jéhovah, Union
Interafricaine des Droits de l'Homme /Zaire

- Article 56.1 & 56.5 Where serious or massive violations have occurred the Commission decides that admissibility conditions are fulfilled.
- Article 4 Killings of students violates the right to life.
- Article 5 Beatings, chaining and suspension of detainees, amongst other acts constitutes a violation.
- Article 7 Sufficient information must be provided to enable a decision on the independence of the courts to be reached.
- Article 8 Harassment of Jehovah's Witnesses and others violates this Article.
- Article 9.2 Prohibition on publishing dissenting views and restriction of access to media for the opposition, amongst other acts is against the Charter.
- Article 10.2 Restrictions on the meetings of opposition parties contravenes the right to free association.
- Article 12.2 The right to freedom of movement violated by preventing persons from leaving the country and subjecting them to difficult border controls.
- f Article 16 The right to health includes the duty of the government to provide services such as safe drinking water, electricity and medicine.
- Article 18.3 The closure of universities will deprive individuals of their right to education.
- Article 26 A condition for the right to be heard by an independent court is the duty on the government to provide the necessary structures to enable this to be enjoyed.

FACTS

1. Communication 25/89 alleges the torture of 15 persons by a military unit on, or about, 19 January 1989. These people were brought to Kinsuka near the Zaire river, where they were subject to severe forms of torture. On 19 April 1989, when several people protested their treatment, they were detained and held indefinitely.
2. Communication 47/90 describes, in detail, many arbitrary arrests, arbitrary detentions, torture, extra-judicial executions, unfair trials, severe restrictions placed on the right to association and peaceful assembly, and suppression of the freedom of the press.
3. Communication 56/91 concerns the persecution of the Jehovah's Witnesses (Témoins de Jéhovah), a religious group. The communication alleges many types of harassment, including arbitrary arrests, unlawful appropriation of church property, and exclusion from access to education.
- t 4. Communication 100/93 contains allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press. It also alleged that public finances were illegally mismanaged; that the failure of the government to provide basic services such as safe drinking water and electricity was degrading; that there was a shortage of medicines in the country; that the universities and secondary schools had been

closed for two years; that freedom of movement was violated by restrictive police measures; and that ethnic hatred was incited by the official media.

5. The African Commission, when it first determined that the communications, taken together, showed evidence of serious or massive violations of human rights in Zaire, brought the matter to the attention of the Assembly of the Heads of State of the Organisation of African Unity.
6. The Commission also requested, on more than one occasion, that the government of Zaire permit a mission consisting of two members of the Commission be received in that country, with the objective of discovering the extent and cause of human rights violations and endeavouring to help the government to ensure full respect for the African Charter. The government of Zaire did not respond to these requests.

PROCEDURE

7. Communication 25/89 was filed by the Free Legal Assistance Group, the Austrian Committee Against Torture, and the Centre Haitien des Droits et Libertés, all members of the World Organisation Against Torture (OMCT). The letter of the Free Legal Assistance Group was dated 17 March 1989, that of the Austrian Committee Against Torture dated 29 March 1989, and that of the Centre Haitien dated 20 April 1989.
8. The Commission was seized of these communications at the 6th Session in October 1989, and the Secretariat of the Commission notified the state of Zaire of the communications on 14 March 1990. Zaire was asked to submit its view on the admissibility of the communications. No response was received.
9. On 17 November 1990, after the 7th session, the Secretariat of the Commission sent a reminder to the state of Zaire. At this time Zaire was notified that the communication would be examined on the merits at the 8th session. No response was forthcoming.
10. On 30 March 1992, another notification was sent by the Secretariat of the Commission to the state of Zaire, that the communication would be examined at the 12th session. No response was forthcoming.
11. On 16 November 1992, another notification was sent by the Secretariat of the Commission to the state of Zaire, to the effect that the communication would be examined at the 13th session.
12. On 12 April 1993, another notification was sent by the Secretariat of the Commission to the state of Zaire, to the effect that if there were no written response within 2 months, the communication would be considered on the merits at the 14th session.
13. On 23 September 1993, the Ministry of Justice of Zaire wrote that no copy of the communication had ever been received. A copy was sent on 3 March 1994 by registered post to the Embassy of Zaire in Dakar. No response was forthcoming.

14. On 26 August 1994 another reminder was sent by the Secretariat of the Commission to the government of Zaire. No response was received.
15. On 30 August 1994, a letter was sent to the complainants requiring any information on the developments in the case since 1989.
16. At the 16th Session held in October/November 1994 in Banjul, The Gambia, the Commission decided to send a mission to Zaire in order to begin a dialogue with the government. The Secretary-General of the O.A.U. was asked to contact the Government to facilitate this proposed visit.
17. On 17 February 1995 the Secretariat of the Commission sent letters to the complainants stating that the cases were still under consideration.
18. On 28 February 1995 a letter was sent by the Secretariat to the Commission to the Secretary-General of the O.A.U., stating that because the Government of Zaire had failed to respond to any of the allegations against it, a mission was the preferred way to examine the human rights situation in Zaire. However, the government of Zaire did not give its consent to the mission.
19. At the 17th session, held in Lomé, Togo, March 1995, the communications against Zaire were declared admissible.
20. On 26 April 1995, the Secretariat to the Commission sent letters to the complainant, stating that the communications had been declared admissible and that a mission would be sent to Zaire. However, the government of Zaire did not give its consent to the mission.
21. At the 18th session held in October 1995, in Praia, Cape Verde, the Commission decided to apply Article 58.1 of the Charter and to draw the attention of the Heads of State and Government to the serious or massive violations of human rights in Zaire.
22. A note verbale to this effect was sent by the Secretariat of the Commission to the Secretary General on 19 December 1995.
23. On 19 December 1995 a letter was sent by the Secretariat of the Commission to the complainants to this effect.
24. On 12 January 1996, a note verbale was sent by the Secretariat of the Commission to the Ministry of Foreign Affairs of Zaire, once more informing the Ministry of the proposed mission to Zaire. The government did not give its consent.
25. At the 19th session, held in March/April 1996 in Ouagadougou, Burkina Faso the Commission adopted this decision.
26. Communication 47/90, dated 16 October 1990, was filed by the Lawyers' Committee for Human Rights, an American NGO, on behalf of victims of human rights abuses in Zaire

27. On 20 October 1990, at the 8th Ordinary Session, held in Banjul, The Gambia, the African Commission was seized of the communication and decided to notify the state of Zaire of the complaint and invite its written comments on the admissibility.
28. On 6 November 1990, the Secretariat of the Commission informed the Ministry of Foreign Affairs of Zaire of this decision by registered post. No response was forthcoming.
29. At the 11th Ordinary Session, held in Tunisia in March 1992, the Commission decided to send a reminder to Zaire. The Secretariat sent this reminder on 30 March 1992. No response was forthcoming.
30. At the 12th Ordinary Session, held in Banjul, The Gambia, the Commission declared the communication admissible and decided that it would be examined on the merits. The notice of this decision was sent by the Secretariat of the Commission on 16 November 1992. No response was forthcoming.
31. On 12 August 1993, the Secretariat sent yet another reminder to the Ministry of External Affairs. No response was forthcoming.
32. On 26 August 1994, a reminder was sent by the Secretariat of the Commission to the government of Zaire. No response was forthcoming.
33. On 30 August 1994, a letter was sent by the Secretariat to the Commission to the complainant requesting any information on the developments in the case since 1990.
34. At the 16th session, held in October/November 1994 in Banjul, The Gambia, the Commission decided to send a mission to Zaire. Communication 47/90 was considered jointly with 25/89, and the actions taken with respect to the communications were identical from this date forward.
35. Communication 56/91, was submitted by the Jehovah's Witnesses (T,moins de J.hovah) and dated 27 March 1991.
36. The Commission was seized of the communication and a notification was sent by the Secretariat of the Commission to the state of Zaire on 14 November 1991. No response was forthcoming.
37. On 30 March 1992 another notification was sent by the Secretariat of the Commission to the state of Zaire. No response was forthcoming.
38. On 12 November 1992 another notification was sent by the Secretariat of the Commission to the state of Zaire by registered post.
39. An acknowledgment of this notification dated 14 September 1993 was received from the Ministry of Justice of Zaire, claiming that a copy of the communication had never been received.

40. On 3 March 1994 another notification was sent by the Secretariat of the Commission by registered post to the Embassy in Dakar. No response has been forthcoming.
41. On 26 August 1994, a reminder was sent by the Secretariat of the Commission to the government.
42. On 30 August 1994, a letter was sent to the complainants requesting information on the developments in the case since 1991.
43. At the 16th session, held in October/November 1994 in Banjul, The Gambia, the Commission decided to send a mission to Zaire in order to establish a dialogue and investigate the case. Communication 56/91 was considered jointly with communications 25/89 and 47/90, and the actions taken with respect to these communications are the same from this date forward.
44. Communication 100/93 was submitted by the Union Inter africaine des Droit de l'Homme (UIDH) on 20 March 1993.
45. The Commission was seized of the communication and it was brought to the attention of the state on 12 April 1993. No response was forthcoming.
46. On 12 August 1993, a reminder was sent by the Secretariat of the Commission to the state of Zaire. No response was forthcoming.
47. On 26 August 1994, another reminder was sent by the Secretariat of the Commission to the government of Zaire. No response was forthcoming.
48. On 30 August 1994 a letter was sent to the complainant requesting any information on the developments in the case since 1993.
49. At the 16th session, held in October/November 1994 in Banjul, The Gambia, the Commission decided to send a mission to Zaire. Communication 100/1993 was considered jointly with communications 25/98, 47/90 and 56/91, and all actions with respect to these communications were the same from this date forward.

LAW

Admissibility

50. It appears to the African Commission that, as provided for under Article 58 of the African Charter, communications 25/89, 47/90, 56/91 and 100/93 reveal the existence of a series of serious or massive violations of human and peoples' rights.
51. Article 56.1 of the African Charter requires that all authors of communications must give their names, even if they desire to be anonymous with respect to the state involved. The African Charter is distinctive in that, while it requires that communications indicate their authors, these authors need not be the victims or their families. This requirement is a clear response to the practical difficulties that face individuals in Africa, and in particular where

there are serious or massive violations that may preclude individual victims from pursuing national or international legal remedies on their own behalf.

52. Where the author of a communication is a non-governmental organisation, as is the case with all the communications in question here, and the situation is one of a series of serious or massive violations, it may be simply impossible for the author to collect the name of each individual victim. Article 56.1 requires only that communications indicate their authors, not the names of all the victims, and the more massive the violation, the greater the likelihood that the victims will be numerous.
There is thus no bar to the Commission considering communications with numerous unnamed victims, as in the present communications.
53. Article 56.5 of the African Charter requires that complainants exhaust local remedies, if any, before the Commission can consider a communication. One of the reasons for this requirement is that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called before an international tribunal.
54. Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance, a function that is not in its mandate and which it clearly does not have the resources to fulfil.
55. In respect of these communications, the government has had ample notice of the alleged violations. Communication 25/89 alleges that individual victims protested to the state as to their treatment. In communication 56/91 as well, the complainants had approached the national courts, without result, concerning instances of their harassment.
56. Even in respect of those communications for which no domestic legal action has been attempted by the victims, given the great numbers of individuals allegedly suffering from human rights violations, and the very fact that the alleged events, if true, would constitute a "series of serious or massive violations", it is clear that the state of Zaire had ample notice of the human rights situation prevailing in its territory.
57. The Commission must read Article 56.5 in the light of its duty to ensure the protection of the human and peoples' rights under the conditions laid down by the Charter. The Commission cannot hold the requirement of exhaustion of local remedies to apply literally in cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each individual complaint. This is the case where there are a large number of individual victims. Due to the seriousness of the human rights situation as well as the great numbers of people involved, such remedies as might theoretically exist in the domestic courts are as a practical matter unavailable or, in the words of the Charter, "unduly prolonged."
58. For the above reasons, the Commission declared the communications admissible.

The Merits

59. 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.
60. In the present case, there has been no substantive response from the Government of Zaire, 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, e.g., the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93).
61. This principle of proceeding with consideration conforms with the practice of other international human rights adjudicatory bodies and with the Commission's duty to protect human rights. The fact that the Government of Zaire does not wish to participate in a dialogue means that the Commission must continue its consideration of the case, although, regrettably, on the basis of facts and opinions submitted by only one of the parties.
62. Article 4 of the African 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.”
63. Communications 47/90 and 100/93, allege killings of students as a result of protests in which they were involved. This is a violation of Article 4.
64. Article 5 of the African Charter reads:
- “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”
65. The beating of detainees with fists, sticks and boots, the keeping of prisoners in chains and subjecting them to electric shock, physical suspension and submersion in water, as detailed in communication 47/90, offend the human dignity. Such acts, together and separately, constitute a violation of Article 5.
66. Article 6 of the African Charter reads:
- “Every individual shall have the right to liberty and to the 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.”

67. The indefinite detention of persons can be interpreted as arbitrary as the detainee does not know the extent of his punishment. The detention of those who protested against torture, as described in communications 25/89, 47/90 and 100/93 violates Article 6.

68. Article 7 of the African Charter specifies:

“Every individual shall have the right to have his cause heard.

This comprises:

...(d), the right to be tried within a reasonable time by an impartial court or tribunal.”

69. Communications 47/90 and 100/93 allege that judicial independence has not been attained. However, although it is contended that the judiciary is subjected to political interference, no specific details are provided to elaborate on this. Although this may be sufficient to offer prima facie evidence of violations, in order for the Commission to take a decision in respect of Article 7.1(d), further information, for example, on the composition of the courts or instances of political interference, is required. Accordingly, the Commission is unable to hold that there has been a violation of Article 7.1(d).

70. Article 8 of the African Charter reads:

“Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”

71. The harassment of the Jehovah's Witnesses and religious leaders, including assassinations, destruction of religious structures and death threats, as described in communications 56/91 and 100/93, constitute a violation of this Article, since the government has presented no evidence that the practice of their religion in any way threatens law and order.

72. Article 9.2 of the Charter reads:

“Every individual shall have the right to express and disseminate his opinions within the law.”

73. Communications 47/90 and 100/93 provide details of government interference in the freedom of expression of supporters of the opposition parties and of human rights activists. Instances include the prohibition of publishing dissenting views from those of the Government and the restriction of access to radio and television to opposition sympathizers. Independent newspapers are not permitted and vendors selling banned publications have been harassed and had these confiscated. Media stations and journalists have been under surveillance and subject to harassment. Students have been subject to later attack by security forces after earlier pro-democracy demonstrations which involved some violence. All these instances provide substantive evidence that the Government has failed to respect the right of individuals to free expression. The Commission holds there has been a violation of Article 9.2.

74. Article 10.1 of the Charter reads:

“Every individual shall have the right to free association provided he abides by the law.”

75. Communications 47/90 and 100/93 detail the restriction by the government on the number of political parties, in effect permitting only those supporters of the regime. These opposition parties were not permitted to meet in public or private and there was evidence that the government attempted to destabilise these groups by harassment. In addition, human rights groups have been prevented from forming and established bodies in certain areas have been unable to hold education courses on human rights issues. These actions by the government constitute clear violations of Article 10.1.

76. Article 12.2 of the Charter reads:

“Every individual shall have the right to leave any country including his own and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health and morality.”

77. The allegations in communication 100/93 concern the prevention of political figures, related to the opposition, and human rights activists from leaving the country. Travellers are subject to considerable difficulties at all border controls and all who desire to travel abroad must obtain a note verbale from the Ministry of Foreign Affairs before applying for a visa. There is no evidence provided by the Government that such restrictions on the freedom of movement are necessary in the protection of national security, law and order, public health or morality and, as such, constitute illegal restrictions on the right. Accordingly, the Commission finds a violation of Article 12.2.

78. Article 16 of the African Charter states:

“Every individual shall have the right to enjoy the best attainable state of physical and mental health.
States parties of the present Charter shall take the necessary measures to protect the health of their people...”

79. The failure of the government to provide basic services necessary for a minimum standard of health, such as safe drinking water and electricity and the shortage of medicine as alleged in communication 100/93 constitutes a violation of Article 16.

80. Article 17 of the Charter reads:

“Every individual shall have the right to education.”

81. The closures of universities and secondary schools for two years and the fact that payments to teachers were in arrears preventing their holding classes, as described in communication 100/93, affect the right of an individual to education and, as such, constitute a violation of Article 17.

82. Article 18.3 of the Charter reads:

“The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”

83. Communication 100/93 alleges that women are discriminated against through education, work and prostitution and that children are the victims of violence, malnutrition and are made to work. However, these allegations are of a general nature and no specific details are advanced. Whilst there may be evidence to suggest prima facie violations of the Charter, no other information is advanced to enable it to make substantive consideration. The Commission is thus unable to find a violation of Article 18.3.

84. Article 26 of the Charter reads:

“States party to the present Charter shall have the duty to guarantee the independence of the Courts...”

85. An inevitable condition for the respect of the right of an individual to have his case heard by impartial courts and tribunals is that this imposes a duty on the State to provide the structures to enable this to be carried out. However, insufficient information was available to enable the Commission to take a decision on violations of Article 7.1(d). For the same reasons the Commission is unable to hold a violation of Article 26.

FOR THESE REASONS, THE COMMISSION

holds that the facts constitute serious or massive violations of the African Charter, namely of Articles 4, 5, 6, 8, 9.2, 10.1, 12.2, 16, and 17.

Taken at the 19th session, Ouagadougou, Burkina Faso, March 1996.