

DRC: Free Legal Assistance Group and Others v Zaire (2000) AHRLR 74 (ACHPR 1995)

1. Communication 25/89 is 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 Organization Against Torture (OMCT). The submission of the Free Legal Assistance Group was dated 17 March 1989, that of the Austrian Committee Against Torture 29 March 1989 and that of the Centre Haitien 20 April 1989. The Communication alleges the torture of 15 persons by a military unit, on or about 19 January 1989, at Kinsuka near the Zaire River . On 19 April 1989 when several people protested their treatment, they were detained and held indefinitely.
2. Communication 47/90, dated 16 October 1990, was filed by the Lawyers' Committee for Human Rights in New York. It alleges arbitrary arrests, arbitrary detentions, torture, extrajudicial 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 was submitted by the Jehovah's Witnesses of Zaire and dated 27 March 1991. It alleges the persecution of the Jehovah's Witnesses, including arbitrary arrests, appropriation of church property, and exclusion from access to education.
4. Communication 100/93 was submitted by the Union Inter africaine des Droits de l'Homme and dated 20 March 1993. It makes allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press. It also alleges that public finances were mismanaged; that the failure of the government to provide basic services was degrading; that there was a shortage of medicines; that the universities and secondary schools had been closed for two years; that freedom of movement was violated; and that ethnic hatred was incited by the official media.
5. The African Commission, when it determined that the communications, taken together, evidenced a grave and massive violation of human rights in Zaire, brought the matter to the attention of the Assembly of the Heads of State of the Organization of African Unity in December 1995.
6. The Commission also requested that 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 of endeavouring to help the government to ensure full respect for the African Charter. The government of Zaire has never responded to these requests for a mission.

Procedure before the Commission

7. Communication 25/89 was received by the Commission in June 1989. The Commission was seized of the communication at its 11th session in October 1989 and the state of Zaire was notified on 14 March 1990.
8. Between 1990 and 1993, numerous reminders were sent by the Secretariat to the government of Zaire, but no response was received.
9. The Secretariat also sent the complainants regular updates on the status of the communications.
10. On 23 September 1993, the Ministry of Justice of Zaire wrote that no copy of the communication had ever been received.
11. A copy was sent on 3 March 1994 by registered post to the Embassy of Zaire in Dakar but no response was forthcoming.
12. At the 16th session, held in April 1994, the Commission decided to send a mission to Zaire in order to create a dialogue.
13. At the 17th session, held in March 1995, the communications against Zaire were declared admissible.
14. The government of Zaire was notified of this decision on 26 April 1995.
15. At the 18th session, held in October 1995, 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 and massive violations of human rights in Zaire.
16. On 12 January 1996, a note verbale was sent to the Ministry of Foreign Affairs of Zaire informing the Ministry of the proposed mission to Zaire to be undertaken by Commissioners Nguema and Ben Salem.
17. Communication no 47/90 was received by the Commission in October 1990.

18. On 20 October 1990, at its 8th ordinary session in Banjul, 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.

19. On 6 November 1990, the Secretariat of the Commission informed the Ministry of Zaire of this decision by registered post. No response was forthcoming.

20. At its 11th ordinary session, the Commission decided to send a reminder to Zaire. The Secretariat sent this reminder on 30 March 1992. No response was forthcoming.

21. At its 12th ordinary session, held in Banjul in October 1992, the Commission declared the communication admissible and decided that it would be examined on the merits.

22. The notice of this decision was sent on 16 November 1992. No response was forthcoming.

23. In 1993 and 1994, the Secretariat sent several reminders to the government of Zaire. No response was received.

24. From August 1994 to the present, the correspondence in respect of this communication is identical with that in communication 25/89 above.

25. Communication no 56/91 was received by the Commission in the summer of 1991.

26. The Commission was seized of the communication at its 10th session in October 1991 and a notification was sent to the state on 14 November, 1991. No response was forthcoming.

27. Two reminders were sent by the Secretariat to the government of Zaire in 1992.

28. In a letter dated 14 September 1993, the Ministry of Justice of Zaire claimed that a copy of the communication had never been received.

29. A copy of the communication was sent on 3 March 1994 by registered post to the Embassy in Dakar, but no response was received.

30. From August 1994, the correspondence in respect of this communication is identical with that in communication 25/89, given above.

31. Communication no 100/93 was received by the Commission in April 1993.

32. The Commission was seized of the communication at its 13th session in April 1993 and it was brought to the attention of the state on 12 April 1993. No response was forthcoming.

33. In 1993 and 1994, reminders were sent to the government of Zaire but no response was forthcoming.

34. As from August 1994, the correspondence in respect of this communication is identical with that in communication 25/89, given above.

Law

Admissibility

35. After deliberations, as envisioned by article 58 of the African Charter, the Commission considered that communications 25/89, 47/90, 56/91 and 100/93 against Zaire reveal the existence of serious and massive violations of human rights.

36. 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 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 body. In this case, the government has had ample notice of the violation.

37. The Commission has never held the requirement 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 violation. This is the situation here, given the vast and varied scope of the violations alleged and the general situation prevailing in Zaire.

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

Merits

39. The main goal of the communications procedure before the Commission is to initiate a positive dialogue [between the complainant and the state concerned in order to reach an amicable settlement]. A prerequisite for amicably remedying violations of the Charter is the good faith of the parties concerned, including their willingness to participate in a dialogue.

40. 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. This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. Since the government of Zaire does not wish to participate in a dialogue, the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complainants alone.

41. Article 5 of the African Charter prohibits torture and inhuman or degrading treatment. The torture of 15 persons by a military unit at Kinsuka, near the Zaire River, as alleged in communication 25/89, constitutes a violation of this article.

42. Article 6 of the African Charter guarantees the right to liberty and security of person. The indefinite detention of those who protested against torture, as described in communication 25/89, violates article 6.

43. Article 4 of the African Charter protects the right to life. Communication 47/90, in addition to alleged arbitrary arrests, arbitrary detention and torture, alleges extrajudicial executions which are a violation of article 4.

44. Article 7 of the African Charter specifies the right to have one's cause heard. The unfair trials described in Communication 47/90 constitute a violation of this right.

45. Article 8 of the African Charter protects freedom of conscience. The harassment of the Jehovah's Witnesses, as described in communication 56/91, constitutes 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. The arbitrary arrests of believers of this religion likewise constitute a contravention of article 6 above.

46. The torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press described in communication 100/93 violate the above articles.

47. Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that states parties should take the necessary measures to protect the health of their people. The failure of the government to provide basic services such as safe drinking water and electricity and the shortage of medicine as alleged in communication 100/93 constitute a violation of article 16.

48. Article 17 of the Charter guarantees the right to education. The closures of universities and secondary schools as described in communication 100/93 constitute a violation of article 17.

For these reasons, the Commission:

[49.] Holds that the facts constitute serious and massive violations of the African Charter, namely of articles 4, 5, 6, 7, 8, 16 and 17.