

74/92 Commission nationale des droits de l'Homme et des libertés / Chad

Summary of Facts

1. The communication¹ is brought by *Commission nationale des droits de l'Homme et des libertés de la Fédération nationale des Unions de jeunes avocats de France*. The complaint alleges several massive and severe violations in Chad.
2. The complaint alleges that journalists are harassed, both directly and indirectly. These attacks are often by unidentified individuals who the Complainants claim to be security service agents of the Government. The Government denies responsibility.
3. The complaint alleges the arbitrary arrest of several people, among those four members of the opposition party, RDP, by the security services. These people were never brought before a court, although they were eventually set free. 15 more people were illegally detained, but have now been liberated.
4. There are several accounts of killings, disappearances and torture. 15 people are reported killed, 200 wounded, and several persons tortured as a result of the civil war between the security services and other groups.
5. The communication alleges the assassination of Bisso Mamadou, who was attacked by armed individuals. The Minister responsible was warned of the danger to Mr Bisso, but he refused to issue protection. Subsequently, the Minister did not initiate investigation into the killing.
6. The communication also alleges the assassination of Joseph Betudi, Vice-President of *Ligue tchadienne des droits de l'Homme*. It also contains allegations of inhuman treatment of prisoners.

Procedure

7. The communication is dated 11th May 1992 and includes a report based on an observation mission to Chad made by the *Association Agir ensemble pour les droits de l'Homme* and the *Fédération nationale des unions de jeunes avocats*.
8. The Commission was seized of the communication at its 12th Session and on 16th November 1992 the Government of Chad was notified of the communication.
9. On 10th March 1993, the Ministry of Justice responded to the communication.
10. On 12th April 1993, the Chairman of the Commission wrote to the Ministry of Foreign Affairs and requested its permission to conduct an on-the-spot investigation in Chad.
11. The Government did not reply to that letter, nor to the following reminders.
12. A letter was sent to the Government on 3rd February 1995, and to the Complainant on 17th February 1995, stating that the communication would be considered at the 17th Session.
13. At the 17th Session in March 1995, the communication was declared admissible. The Government and Complainant were informed of that decision.
14. On 1st September 1995, a letter was sent to the Government stating that the communication would be heard on its merits at the 18th Session of the Commission and inviting the Government to send a representative.
15. At the 18th Session, the Commission heard Ms Fabienne Trusses-Naprous, of the *Fédération nationale des unions de jeunes avocats, Commission nationale des droits de l'Homme et des libertés* of France. She reiterated the information in the original communication, both verbally and by way of a memoire. This memoire, in addition to summarising the information in the original communication, affirmed that the human rights situation in Chad has not seen improvement to the present day. The Commission decided the communication on the merits, resolving that there was evidence of serious and massive violations of human and peoples' rights. Article 58 was invoked to draw the attention of the Assembly of Heads of State and Government of the OAU to this fact.
16. On 27th November 1995 a letter was received from the Ministry of External Affairs of Chad with regard to the Secretariat's letter of 1st September 1995. This letter stated that the National Human Rights Commission of Chad could find no record of the communication.

Law

17. Article 1 of the African Charter reads:

The Member States of the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

18. In this case, the Complainant claims that not only did Government agents commit violations of the African Charter, but that the state failed to protect the rights in the Charter from violation by other parties.

19. The Government claims that no violations were committed by its agents, and that it had no control over violations committed by other parties, as Chad is in a state of civil war.

20. The Charter specifies in Article 1 that the States Parties shall not only recognise the rights duties and freedoms adopted by the Charter, but they should also "undertake.....measures to give effect to them". In other words, if a State neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not the immediate cause of the violation.

21. The African Charter, unlike other human rights instruments ², does not allow for State parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter.

22. In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the Government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

23. The Complainant claims that the events in Chad constitute violations of Articles 4 (right to life), 5 (Prohibition of torture, inhuman and degrading treatment), 6 (Right to life and security of the person), 7 (Right to a fair trial), and 10 (Right to freedom of expression).

24. In the present case, there has been no substantive response from the Government of Chad, only a blanket denial of responsibility.

25. 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, Commission must decide on the facts provided by the Complainant and treat those facts as given³. 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 Chad does not wish to participate in a dialogue, that the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complaints alone.

26. Thus, in the absence of a substantive response by the Government, in keeping with its practice, the Commission will take its decisions based on the events alleged by the Complainants.

Holding

For these reasons, the Commission

Finds that there have been serious and massive violations of human rights in Chad.

Finds that there have been violations of Articles 4, 5, 6, and 7.

Praia, Cape Verde, October 1995.

1 Editor's note: The English language version is generally of shorter length (26 paragraphs in all) and is less detailed than the French language version (forty one paragraphs).

2 e.g. European Convention on Human Rights, Article 15

x Article 15 - Derogation in time of emergency 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this

Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 § 1 and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

, Inter American Convention on Human Rights, and International Covenant on Civil and Political Rights.

3 See, e.g., the Commission's decisions in communications 59/91, 60/91, 64/9, 68/92, 78/92, 87/93 and 101/93.