

FACTS

The complaint is presented by a Senegalese NGO, Rencontre Africaine pour la Defence des Droits de l'Homme, on behalf of 517 West Africans who were expelled from Zambia on 26 and 27 February 1992, on grounds of being in Zambia illegally. Prior to their expulsion, most of the individuals had been subject to administrative detention for more than 2 months. The deportees lost all the material possessions they had in Zambia, and many were also separated from their Zambian families.

The communication was submitted on 28 February 1992. The Commission was seized of it at the 12th Session.

On 13 November 1992, the text of the communication was sent to the Zambian Ministry of Justice and ministry of External Affairs by registered post. No reply has been forthcoming.

At the 16th Session, the communication was declared admissible and the parties were informed that the merits of the case would be considered at the 17th Session.

At the 18th session in October 1995, a delegation of the Zambian government appeared and presented additional information dated 29 September 1995.

The complainant also appeared and presented a reply to the government's arguments.

The Commission decided to pursue an amicable resolution to the communication, which would involve further details being given to the Zambian government so that reparations might be effected.

On 2 August 1996, the Commission informed the Government of Zambia of its intention to continue the efforts towards an amicable resolution of the case.

THE LAW **Admissibility**

The Zambian government argues that the communication must be declared inadmissible because domestic remedies have not been exhausted.

Article 56 of the African Charter provides as follows:

"Communications shall be considered if they:

5. are sent after exhausting local remedies, if any, unless it is obvious that these procedures are unduly prolonged,..."

The rule requiring the exhaustion of local remedies as a condition of the presentation of an international claim is founded upon, amongst other principles, the contention that the respondent state must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

This does not mean, however, that complainants are required to exhaust any local remedy which is found to be, as a practical matter, unavailable or ineffective.

When the Zambian government argues that the communication must be declared inadmissible because the local remedies have not been exhausted, the government then has the burden of demonstrating the existence of such remedies. The government of Zambia attempts to do so by referring to the Immigration and Deportations Act which provides for appeal of expulsion orders. The government states that actions for loss of property likewise can be brought under Zambian law.

14. The question is therefore whether, in the circumstances alleged, the Immigration and Deportation Act constitutes an effective and adequate remedy in respect to the complaints.

15. The mass nature of the arrests, the fact that victims were kept in detention prior to their expulsions, and the speed with which the expulsions were carried out gave the complainants no opportunity to establish the illegality of these actions in the courts. For complainants to contact their families, much less attorneys, was not possible. Thus, the recourse referred to by the government under the Immigration and Deportation Act was as a practical matter not available to the complainants. This was confirmed by the complainants during their arguments before the Commission, as well as by expert testimony. (See "RThetaplique du RADDHO a la RThetaponse du Gouvernement Zambien," p. 3; also letter of Executive Director of Afronet Zambia, 7 October 1995.)

16. The Zambian government argues that the victims were remiss in not taking advantage of the legal aid system in Zambia ("Additional Information," p.6.) However, complainants make clear, in their "RThetaplique" and through expert testimony contained in the file, that if the victims of deportation were in fact illegal as the government argues, they would be ineligible for legal aid (See "RThetaplique", p. 3; see also the letter of Chakota Beyani, Refugee Studies Program, Oxford University, p. 1).

17. For the above reasons the Commission holds the communication admissible.

The Merits

18. Given that the process of arriving at an amicable resolution can take a substantial period of time, the Commission believes it is important to make a statement on the question of law raised by this communication.

19. Article 12, paragraph 5 of the Charter provides:

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

20. Clearly, the drafters of the Charter believed that mass expulsion presented a special threat to human rights.

21. The Charter makes this point clearly in Article 2, which states:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social original, fortune, birth or other status."

22. This imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals.

23. The government of Zambia argues that the expulsion of the west African was justified because they were in Zambia illegally, and that the African Charter does not abolish visa requirements and borders between African states. It is true that the African Charter does not bar deportations per se, but Zambia's right to expel individuals does not justify the manner in which it does so.

24. The victims on whose part RADDHO seized the Commission were all from West Africa, some from Senegal, some from Mali, Guinea Conakry, and other West African countries. The government of Zambia, in its "Additional Information" presented to the Commission at the 18th Session, argues that the expulsion was not discriminatory because nationals of several West African countries and other foreign countries were all subject to the same treatment (See "Additional Information", p.1; list of aliens repatriated between 25th November 1991 and 16 January 1992, attached).

25. The complainants respond that they are concerned only with the expulsion of West Africans, because it is these persons who appealed to them for help, but that simultaneous expulsion of nationals of many countries does not negate the charge of discrimination. Rather, the argument that so many aliens received the same treatment is tantamount to an admission of a violation of Article 12.5. ("RThetaplique," p.1-2)

26. It is clear from the government's own list of repatriated aliens, however, that after excluding nationals Zambia's immediate neighbors, Tanzania and Zaire, West Africans constitute the majority of those expelled.

27. The Zambian government disputes the characterization of the expulsions as "en masse" by arguing that the deportees were arrested over a two-month period of time, at different places, and served with deportation orders on different dates (Additional Information, p.4, pp iii.) Zambia, however, cannot prove that the deportees were given the opportunity to seek appeal against the decision on their deportation.

28. Zambia maintains that the two months during which some of the deportees were held were necessary to verify their nationality in some cases, and also that complainants might have used this time to contact their lawyers. The facts of this communication show that West Africans were arrested and assembled over time, with a view to their eventual expulsion. The deportees were kept in a camp during this time, not even an ordinary prison, and it was impossible for them to contact their lawyers.

29. Article 7 of the Charter specifies:

"Everyone shall have the right to have his cause heard. This comprises:

a. the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, law, regulations and customs in force."

In holding this case admissible the Commission has already established that none of the deportees had the opportunity to seize the Zambian courts to challenge their detention or deportation. This constitutes a violation of their rights under Article 7 of the Charter and under Zambian national law.

31. The African Commission will not dispute that the Zambian state has the right to bring legal action against all persons illegally residing in Zambia, and to deport them if the results of such legal action justify it. However, the mass deportation of the individuals in question here, including their arbitrary detention and deprivation of the right to have their cause heard, constitute a flagrant violation of the Charter.

FOR THE ABOVE REASONS, THE COMMISSION

decides that the deportations constitute a violation of Articles 2, 7.1(a), and 12(5) of the African Charter resolves to continue efforts to pursue an amicable resolution in this case.

Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1997