

Communication 74/92

Commission Nationale des Droits de l'Homme et des Libertés/Chad

FACTS

1. The communication is brought by the Commission Nationale des Droits de l'Homme et des Libertés of the Fédération Nationale des Unions de Jeunes Avocats in France. The complaint alleges massive and serious violations of human rights in Chad.
2. The complaint alleges that journalists are harassed, both directly and indirectly. These attacks are often by unidentified individuals whom 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 these, four members of the opposition party, R.D.P., by the security services. These people were never brought before a court, although they were eventually set free. Fifteen more people were illegally detained, but have now been released.
4. There are several accounts of killings, disappearances and torture. Fifteen 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 Mamadou Bisso, 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 the inhuman treatment of prisoners.

PROCEDURE BEFORE THE COMMISSION

7. The communication is dated 11 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 Federation Nationale des Unions de Jeunes Avocats.
8. The Commission was seized of the communication at the 12th Session, and on 16 November 1992 the government of Chad was notified of the communication.
9. On 10 March 1993, the Ministry of Justice of Chad responded to the communication.

10. On 12 April 1993, the Chairman of the Commission wrote to the Ministry of Foreign Affairs and requested its permission to conduct an on-site investigation in Chad.
11. The government of Chad did not reply to that letter, nor the following reminders.
12. A letter was sent to the government on 3rd February 1995 and to the complainant on 17 February 1995, stating that the communication would be considered at the 17th session.
13. At the 17th session, held in March 1995 in Lomé, Togo, the communication was declared admissible. The government and the complainant were informed of that decision.
14. On 1 September 1995, a letter was sent to the government stating that the communication would be heard on the merits at the 18th session of the Commission and inviting the government to send a representative.
15. At the 18th session, held in October 1995 in Praia, Cape Verde, the Commission heard Ms. Fabiene 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 brief. This brief, 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. 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 27 November 1995, a letter was received from the Ministry of External Affairs of Chad with regard to the Secretariat's letter of 1 September 1995. This letter stated that the National Human Rights Commission of Chad could find no record of the communication.

LAW

Admissibility

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 and other measures to give effect to them”.

18. In this case, the complainant complains that not only did the 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 instruments¹ does not allow for States 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 for 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 or 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 has the 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 Article 4 (right to life), Article 5 (prohibition from torture, inhuman and degrading treatment), Article 6 (right to liberty and security of the person), Article 7 (right to a fair trial) and Article 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, the Commission must decide on the facts provided by the complainant and treat those facts as given². This principle conforms with the duty to protect human rights. Since the government of Chad does not wish to participate in a

¹ E. g. the European Convention on Human Rights, Article 15; the Inter-American Convention on Human Rights; and the International Covenant on Civil and Political Rights.

² See e.g. the Commission’s decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93.

dialogue, that the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complainants alone.

26. Thus in the absence of a substantive response by the government, in keeping with its practice, the Commission will take its decision based on the events alleged by the complainants.

FOR THESE REASONS, THE COMMISSION

finds there have been serious or massive violations of human rights in Chad and

finds that there has been violations of Articles 1, 4, 5, 6, 7 and 9 of the Charter.

Taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995

