

Communications 48/90, 50/91, 89/93, Amnesty International and Others v. Sudan

1) Reference Details

Jurisdiction: African Commission on Human and Peoples' Rights

Date of Decision: 26th Ordinary Session, November 1999

Case Status: Concluded

Link to full case:

www.chr.up.ac.za/centre_publications/ahrlr/ahrlr-text.pdf

2) Facts

The Commission considered jointly the Communications submitted by Amnesty International, the Lawyers' Committee for Human Rights and the Association of Members of the Episcopal Conference of East Africa. The Communications alleged violations of human rights taking place primarily in southern Sudan. These included extra-judicial executions, arbitrary arrests and detentions since July 1989, the arrest, detention and torture of opposition group members since June 1990 and the suppression of Sudanese Christians.

In terms of religion there is a north-south divide in Sudan, where the peoples of southern Sudan are predominantly Christian or subscribe to traditional beliefs, and in the north the majority of people practice Islam and Shari'a is the national law applied throughout Sudan.

3) Law

- African Charter on Human and Peoples' Rights articles 2, 4, 5, 6, 7, 8, 9, 10 and 26

4) Legal Arguments

The Complainants submitted evidence of executions and detentions and referred to Decree no 2 of 1989 which permits the detention of anyone suspected of being a 'threat to political or economic security'. The Complainants submitted that this Decree allowed the arrest and detention of persons based on the sole word of the President without requiring further reasons and without the possibility of a judicial challenge.

The Association of Members of the Episcopal Conference of East Africa referred in their Communication to the arbitrary arrests and detention of priests, the harassment of religious figures and the prevention of non-Muslims from receiving aid. It is alleged that the prevention of the building of churches and the preaching of Christianity was designed to provoke conversion to Islam.

The Government argued that military tribunals do permit the possibility of an appeal to a Military Court of Appeal and that such courts undertake an inquiry ahead of the trial with evidence taken on oath. Therefore, the Government submitted that they were not arbitrary. Furthermore the Government stated that under the law the accused has the right to be accompanied by an advocate or friend and the right to be represented by an advocate.

The Government prefaced its submission by reference to the rebellion in southern Sudan and claimed that over 90% of the violations alleged took place in areas controlled by the SPLA (Sudan People's Liberation Army). Finally, the Government stated that all persons who had been

mentioned in Communication 50/91 had been released and reiterated their commitment to article 24 of the Sudanese Constitution which guarantees freedom to worship.

5) Decision

The Commission recognised that it has not been a static situation in Sudan and since the filing of the Communications there had been improvements. However, the Commission reiterated that it had to decide the case on the basis of the facts submitted to it.

Religious discrimination

In relation to the question of religious freedom the Commission considered that Article 8 guaranteeing the freedom of conscience, the profession and the practice of religion had to be considered in connection with article 2 of the African Charter guaranteeing equal protection. The Commission stated that whilst it had full respect for the religious freedom of Muslims in Sudan it 'cannot countenance the application of law in such a way as to cause discrimination and distress to others.' (para 72 p310 AHRLR (2000))

The Commission considered that the application of Shari'a law by tribunals must respect other international obligations and as such it would be 'fundamentally unjust that religious laws should be applied against non-adherents of that religion.' (para 73 p310 AHRLR (2000)) The Commission stated that there was a right to a secular court as Shari'a tribunals are not competent to judge non-Muslims.

Furthermore the Commission stated that the Government had not responded convincingly to accusations of the harassment of non-Muslims and the selective distribution of aid on the ground of religion. Considering such lack of response the Commission held that the allegations were therefore probable. As such the Commission declared violations of articles 8 and 2 of the African Charter.

Other Communications

The Commission referred to the evidence of the UN Special Rapporteur which detailed summary and arbitrary trials resulting in executions. The Commission considered that the scope of investigations into extra-judicial executions had lacked what it considered necessary to prevent and punish such acts effectively. The Commission ruled that as the Government presented no contrary evidence and provided no argument the Commission must take as proven or at least plausible the facts presented to it and ruled that there had been a violation of article 4 of the African Charter.

Regarding the claims of torture the Commission noted that there was substantial evidence of physical abuses in violation of article 5 of the African Charter. The Commission further decided that the holding of people without contact with their family and leaving their family without knowledge of their whereabouts amounted to inhuman treatment of both the detainee and the family, in violation of article 5.

The Commission ruled that the scale of prosecutions of offenders that had taken place was not 'commensurate' with the level of abuse which was evidenced. Furthermore that no preventative

measures were in place and that the acts had neither been refuted nor explained by the Government.