

## **Communication 227/99, Democratic Republic of Congo v. Burundi, Rwanda and Uganda**

### **1) Reference Details**

Jurisdiction: African Commission of Human and Peoples' Rights

Date of Decision: 33<sup>rd</sup> Ordinary Session, May 2003

Case Status: Concluded

### **2) Facts**

The case concerned a Communication made by the Democratic Republic of the Congo (DRC) to the African Commission alleging violations of the African Charter on Human and Peoples' Rights (African Charter) and international law including the Geneva Conventions 1949 and Additional Protocols, the UN Charter and UN Declaration on Friendly Relations. It was also the first inter-state communication filed before the African Commission on Human and Peoples' Rights (the Commission).

The DRC alleged that armed forces from Burundi, Uganda and Rwanda had been occupying its border provinces in the eastern part of the country and committing mass violations of human rights and international law. Such alleged violations included the mass killing of civilians and the siege of a hydroelectric dam (civilian run) resulting in the cut off of electricity to homes, schools and hospitals – which led to the deaths of patients dependent on life support systems. The DRC further alleges, in particular against the Ugandan soldiers, the deliberate spread of HIV/AIDS amongst the local population by the perpetration of rape. Further allegations were the mass looting of civilian property and the natural mineral wealth in the region, as well as the forced movement of populations from the region into 'concentration camps' in Rwanda in order to establish a 'Tutsi land'.

### **3) Law**

- African Charter on Human and Peoples' Rights Articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22, and 23
- Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949
- Additional Protocol 1 to the Geneva Conventions
- UN Charter
- UN Declaration on Friendly Relations Between Nations

### **4) Legal Arguments**

The DRC alleged that the violations of international law described above constituted a violation of the African Charter which also imposes upon the Commission a duty to uphold international law. It claimed that the DRC had been the victim of an armed aggression in violation of the UN Charter and the principles that govern friendly relations between nations.

Rwanda denied all the charges of human rights abuses and justified the presence of soldiers as a security measure designed to protect its own territory from the actions of armed rebel groups hiding in the Congolese provinces and receiving support from the DRC.

Uganda made similar claims to justify the presence of soldiers on Congolese territory, it referred to an invitation it received in 1997 following the instauration of the Kabila Government, to stop

the activities of Ugandan rebels in the eastern provinces. The invitation was revoked in 1998 following a new rebellion in the DRC which was blamed on Rwandan and Ugandan forces. Uganda denies that its soldiers committed human rights abuses and argues that with a lack of independent verification of the facts the case is inadmissible.

The Commission moved to consider the merits of the case. Rwanda and Uganda did not participate beyond submissions on the admissibility. Burundi did not respond to any of the submissions.

## **5) Decision**

The Commission considered that there was an effective occupation of parts of the Complainant States' territory which constituted a violation of the Charter which requires the Commission, by virtue of Article 23, to uphold international law including the UN Declaration of Friendly Relations and the UN Charter.

The alleged human rights violations stemmed from this illegal occupation and were in direct violation of the Charter and international law. Articles 60 and 61 of the African Charter require the Commission to draw inspiration from international law on human and peoples' rights which includes the Geneva Conventions of 1949 and the Additional Protocols. The acts of violence alleged – killings, rapes and mutilations – while still in effective occupation of the eastern provinces of the DRC were considered by the Commission to be inconsistent with the Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949 and Additional Protocol 1.

Furthermore, the Commission held that there was a violation of Article 2 of the African Charter concerning non-discrimination in the enjoyment of rights, as the violations were directed at victims based on their national origin.

Further violations of specific rights in the African Charter were found including violation of the protection assured to the family as the fundamental unit of society and the violation of the freedom to leave and return to one's country, which were compromised by the forced displacement of the population out of the region.

The Commission declared that violations of international law, such as the Additional Protocol 1 to the Geneva Conventions, had taken place by the siege of the hydroelectric dam in lower Congo which resulted in the cutting off of electricity to schools, homes and hospitals. This additionally compromised Articles 16 and 17 of the African Charter – the rights to the best attainable physical and mental health and the right to education.

The Commission urged all states to abide by international law and urged Rwanda, Uganda and Burundi to withdraw from DRC territory. The Commission also recommended that adequate reparations be made on behalf of the victims of human rights violations committed by the armed forces of the respondent states whilst in effective occupation of DRC territory.