



Democratic Republic of the Congo v. Burundi, Rwanda and Uganda

(2004) AHRLR 19 (ACHPR 2003); Communication 227/99

Country: Burundi, Congo, DRC, Rwanda, Uganda

Region: Africa

Year: 2003

Court: African Commission on Human and Peoples' Rights African Commission on Human and Peoples' Rights

Health Topics: Child and adolescent health, Disasters and emergencies, Health care and health services, HIV/AIDS, Hospitals, Violence

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to bodily integrity, Right to family life, Right to health, Right to life, Right to property

Facts

The Democratic Republic of Congo initiated proceedings before the African Commission on Human and Peoples' Rights, alleging that the respondent countries (Burundi, Rwanda, and Uganda) committed various human rights violations.

The Democratic Republic of Congo alleged that the respondent countries committed multiple massacres against people of the Democratic Republic of Congo including attacking Inga hydroelectric dam, disrupting millions of lives and causing the death of patients in hospitals, raping and murdering hundreds of women, attempting to spread HIV/AIDS throughout the Democratic Republic of Congo via rape, establishing concentration camps, deporting people from the Democratic Republic of Congo, looting various resources from the Democratic Republic of Congo, including money, gold and coffee, and finally endangering the lives of several endangered species.

The Democratic Republic of Congo alleged that the respondent countries violated articles 2, 4, 6, 12, 16, 17, 19, 20, 21, 22 and 23 of the African Charter on Human and Peoples' Rights. They asked the Commission to condemn the actions of the respondent countries, begin an independent investigation of the allegations, require the respondent countries to pay reparations, force the withdrawal of the respondent countries from the Democratic Republic of the Congo, and decide any further punishment for the respondent countries.

Burundi did not reply to the allegations at any time. Rwanda and Uganda both admitted that their troops were in fact occupying portions of the Democratic Republic of the Congo but alleged that they needed troops there to protect their own countries from rebel groups supported by the Democratic Republic of the Congo. Rwanda and Uganda also denied looting and pillaging the Democratic Republic of the Congo. In addition, Rwanda and Uganda alleged that procedure was not properly followed for the complaint and it should be dismissed.

Decision and Reasoning

The Court held that the procedures laid out in the Charter for serving a complaint (notifying the respondents before submitting the complaint to the Chairman) were not mandatory but merely permitted. In addition, they ruled that submitting the complaint directly was especially appropriate in this case, where the aims of said procedure (conciliation) were unlikely to be successful.

The Court noted that Burundi's failure to reply to the allegations and participate in proceedings constituted an admission of the allegations. Burundi was bound to decisions made by the Commission because it ratified the African Charter.

Overall, the court found that the respondent states had violated articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22, and 23 of the African Charter on Human and Peoples' Rights. They emphasized that the behavior of the respondent states was, "a flagrant violation of the rights of the peoples of the Democratic Republic of Congo to their unquestionable and inalienable right to self-determination provided for

by article 20 of the African Charter.” The Commission also found that the respondent countries’ conduct was inconsistent with part III of the Geneva Convention related to Protection of Civilian Persons in Time of War of 1949 and Protocol I to the Geneva Conventions.

The Commission urged the respondent states to abide by their obligations, as well as to immediately withdraw from the Democratic Republic of Congo. It also recommended that reparations be paid to the Democratic Republic of Congo.

Decision Excerpts

86. The raping of women and girls, as alleged and not refuted by the respondent states, is prohibited under article 76 of the first Protocol Additional to the Geneva Conventions of 1949, which provides that '[w]omen shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other forms of indecent assault'. It also offends against both the African Charter and the Convention on the Elimination of All Forms of Discrimination Against Women; and on the basis of articles 60 and 61 of the African Charter find the respondent states in violation of the Charter.”

“88. The looting, killing, mass and indiscriminate transfers of civilian population, the siege and damage of the hydro-dam, stopping of essential services in the hospital, leading to deaths of patients and the general disruption of life and state of war that took place while the forces of the respondent states were occupying and in control of the eastern provinces of the complainant state are in violation of article 14 guaranteeing the right to property, articles 16 and 17 (all of the African Charter), which provide for the rights to the best attainable state of physical and mental health and education, respectively.”

“89. Part III of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949, particularly in article 27, provides for the humane treatment of protected persons at all times and for protection against all acts of violence or threats and against insults and public curiosity. Further, it provides for the protection of women against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Article 4 of the Convention defines a protected person as those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals.”

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