



Amnesty International, et al. v. Sudan

Comm. Nos. 48/90-50/91-52/91-89/93 (1999).

Country: Sudan

Region: Africa

Year: 1999

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

Health Topics: Prisons

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of association, Freedom of expression, Freedom of religion, Right to due process/fair trial, Right to liberty and security of person

Facts

Amnesty International and three other international human rights organizations filed a series of four complaints (Communications 48/90, 50/91, 52/91, and 89/93) on behalf of hundreds of prisoners, whom the organizations believed suffered detention without trial, as well as various forms of torture and cruel and inhuman treatment in prison, following a coup d'état in Sudan on July 30, 1989. Complainants allege that special laws, including Decree No. 2 of 1989 and the 1990 National Security Act granted the Government of Sudan vast powers of arrest and detention and ultimately permitted State agents to detain individuals suspected of threatening the political or economic security of the state for up to three months without access to family or legal representation. Furthermore, the complainants allege that Sudan detained suspects in "ghost houses," in which the suspects suffered widespread torture and mistreatment. Specifically, the complainants alleged that the prison staff soaked the detainees with cold water while making them lie on the ground, they confined four individuals in single cells 1.8 meters wide, they deliberately flooded cells to prevent detainees from lying down, they subjected detainees to mock executions, and they prohibited the detainees from washing themselves. In addition, guards burned detainees with cigarettes, banged on doors loudly throughout the night to prevent the detainees from sleeping, tied individuals with ropes so as to cut off circulation to limbs, beat the detainees severely with sticks and poured battery acid into open wounds. One of the complainants, an Episcopalian organization also alleged that the Government of Sudan prevented non-Muslims from receiving humanitarian aid and that it distributed food unequally in prisons to non-Muslims. Therefore, in addition to violations of civil liberties enshrined in Articles 2 (right to freedom from discrimination), 6 (right to liberty and to the security of his person), 7 (right to have his cause heard), 8 (Freedom of conscience, the profession and free practice of religion), 9 (right to receive information), 10 (right to free association), and 26 (state's duty to guarantee the independence of the Courts) of the African Charter on Human and Peoples' Rights (Charter), the complainants allege Sudan violated the right to life under Article 4 of the Charter and the right to freedom from torture, cruel, inhuman and degrading treatment and punishment under Article 5. In its defense, the Government confirmed the existence of the national legislation and the special courts, but it contended that they were not extra-legal because of procedural safeguards provided to defendants throughout the arrest and detention processes. The Commission combined all four complaints based on the similarity of the allegations and the ongoing human rights situation in Sudan. The Commission subsequently found each complaint individually admissible based on the awareness of the violations and the insufficient or non-existent internal remedies for victims.

Decision and Reasoning

The Commission held Sudan responsible for violations of the alleged articles insofar as legislation in conflict with the African Charter remained in effect after the Charter came into force on October 21, 1986, as well as to the extent that Sudan had awareness of the ongoing violations and did not present convincing evidence to demonstrate its efforts to end the violations. More specifically, Sudan violated the right to freedom from torture, cruel, inhuman and degrading treatment and punishment under Article 5 insofar as the Government did not "refute" or "explain" the overwhelming substantial evidence the Complainants produced. In addition to physical abuse, separation from one's family without the family's knowledge of the detainee's whereabouts also constituted inhuman treatment. The Commission also found that Sudan had also violated the right to life under Article 4 of the Charter, as the investigation of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions discovered evidence of extra-judicial executions. Failure to refute allegations of an unequal distribution of food in prisons to non-Muslims further constituted a violation of the

right to freedom of conscience and religion under Article 8 of the Charter. Additionally, Sudan was held responsible for violating a number of civil liberty rights protected under the Charter, including non-discrimination (Article 2), freedom from arbitrary arrest (Article 6), numerous due process rights under Article 7(1)(a), (c) and (d), the right to freedom of expression (Article 9), freedom of association (Article 10), and the guarantee of an independent judiciary (Article 26). Accordingly, the Commission concluded that Sudan should put an end to the violations and adhere to such obligations under the Charter.

Decision Excerpts

"There is substantial evidence produced by the Complainants to the effect that torture is practised. All of the alleged acts of physical abuses, if they occurred, constitute violations of Article 5. Additionally, holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family whether the individual is being held and his whereabouts is inhuman treatment of both the detainee and the family concerned." Page 7, paragraph 54.

"The government does not deal with these allegations in its report. The Commission appreciates the fact that the government has brought some officials to trial for torture, but the scale of the government's measures is not commensurate with the magnitude of the abuses. Punishment of torturers is important, but so also are preventive measures such as halting of incommunicado detention, effective remedies under a transparent, independent and efficient legal system, and ongoing investigations into allegations of torture." Page 7, paragraph 56.

"A serious allegation is that of unequal food distribution in prisons, subjecting Christian prisoners to blackmail in order obtain food. These attacks on individuals on account of their religious persuasion considerably restrict their ability to practice freely the religion to which they subscribe. The government provides no evidence or justifications that would mitigate this conclusion. Accordingly, the Commission holds a violation of Article 8." Page 9, paragraph 76.

"The Commission is cognisant of the fact that it has found many violations of the Charter on the part of the Government. In concrete terms, this shows that the citizens of Sudan have endured a lot of suffering. To change so many laws, policies and practices will of course not be a simple matter. However, the Commission must emphasise that the people of Sudan deserve no less. The government is bound by its international obligations and the Commission's findings are specific enough to permit their implementation." Page 9, paragraph 83.