



Institute for Human Rights and Development in Africa v. Guinea

Inst. for H.R. & Dev. in Afr. v. Guinea, Afr. Comm[™]n Human & Peoples[™] Rights, Comm. No. 249/02 (2004).

Country: Guinea

Region: Africa

Year: 2004

Court: African Commission on Human and Peoples' Rights

Health Topics: Disasters and emergencies, Sexual and reproductive health, Violence

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

Facts

A human rights organization acting on behalf of Sierra Leonean refugees alleged that a national radio address of Guinean President Cont[©] directing Guinean authorities to arrest, search and confine Sierra Leonean refugees to refugee camps incited soldiers and civilians to engage in attacks that violated provisions of the African Charter on Human and Peoples[™] Rights. Specifically, the Complainants alleged that Guinean soldiers and civilians perpetrated physical violence, including beatings and shootings of refugees inside and outside of the camps, as well as widespread rapes of Sierra Leonean women. They further alleged that Guinean soldiers subjected men and women to humiliating strip searches conducted multiple times throughout the day and in front of crowds and on-looking soldiers. Such treatment, the Complainants alleged, violated the right to freedom from discrimination under Article 2 of the Charter, as well as the right to life under Article 4; the right to freedom from torture and cruel, inhuman and degrading treatment under Article 5; and the right to property under Article 14. Moreover, the Complainants alleged that the Government of Guinea failed to adhere to its obligations to protect refugees from refoulement under Article 12(5) of the Charter and other international instruments protecting the rights of refugees, including Article 4 of Organization of African Unity (OAU) Convention [Governing] the Specific Aspects of Refugees.

The Commission declared the complaint admissible during its 33rd Ordinary Session held from May 15-29, 2003, finding that the attempts of Sierra Leonean refugees would prove futile due largely to ongoing threats of reprisal from state officials and the overwhelming number of individuals in need of recourse in domestic courts. Among its defenses on the merits, the Government of Guinea claimed any were valid responses to surprised armed aggression from Liberia and Sierra Leone within the scope of Article 9 of the Charter, which permits states to take provisional measures during exceptional circumstances. President Cont[©] also claimed he never specifically referred to Sierra Leoneans in his radio address.

Decision and Reasoning

The Commission concluded that the Republic of Guinea violated the right to non-discrimination of Sierra Leonean refugees under Article 2 of the Charter, as well as violated the right to life of refugees protected under Article 4, the right to freedom from torture and cruel, inhuman and degrading treatment under Article 5, and the right to property under Article 14. The Commission found that although the President did not provide a transcript of the actual speech, sufficient evidence and testimonies of eyewitnesses revealed that, following the address, Guinean authorities used rape as a weapon of discrimination against refugees in prisons, houses, control posts and refugee camps and that physical searches of refugees in front of soldiers and other onlookers constituted a "serious insult to their dignity" beyond the scope of national security justifications recognized under Article 9 of the Charter.

Furthermore, the mass expulsion of refugees violated Article 12(5) of the Charter and the African Union Convention Governing Specific Aspects of Refugee Problems in Africa, and Article 4 of the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. A Joint Commission of the Sierra Leone and Guinea Governments should be established to assess losses and to compensate the victims.

Decision Excerpts

"42. While the efforts of the Guinean authorities to host refugees are commendable, the allegations that the

government instigated and directly discriminated against Sierra Leonean refugees present a picture of serious human rights abuses which contravene the African Charter and the other international human rights instruments to which Guinea is a party." Page 6.

"43. The statements made under oath by several refugees indicate that their refugee camps were direct targets and taken together with accounts of numerous other abuses, constitute tangible evidence that the Sierra Leonean refugees in this situation had been targeted on the basis of their nationality and had been forced to return to Sierra Leone where their lives and liberty were under threat from the on-going war." Page 6.

"69. In communication 71/92 Rencontre africaine pour la défense des droits de l'Homme/Zambia, the African Commission pointed out that "those who drafted the [African] Charter considered large scale expulsion as a special threat to human rights". In consequence, the action of a State targeting specific national, racial, ethnic or religious groups is generally qualified as discriminatory in this sense as it has no legal basis." Page 9.

"71. The African Commission appreciates the legitimate concern of the Guinean Government in view of the threats to its national security posed by the attacks from Sierra Leone and Liberia with a flow of rebels and arms across the borders. As such, the Government of Guinea is entitled to prosecute persons that they believe pose a security threat to the State. However, the massive violations of the human rights of refugees as are outlined in this communication constitute a flagrant violation of the provisions of the African Charter." Page 10.

"73. Although the African Commission was not provided with a transcript of the speech of the President, submissions before the Commission led it to believe that the evidence and testimonies of eye witnesses reveal that these events took place immediately after the speech of the President of the Republic of Guinea on 9th September 2000. The African Commission finds that the situation prevailing in Guinea during the period under consideration led to certain human rights violations." Page 10.