



Sudan Human Rights Organisation, et al. v. Sudan

Comm. No. 279/03-296/05 (2009).

Country: Sudan

Region: Africa

Year: 2009

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

Health Topics: Diet and nutrition, Disasters and emergencies, Environmental health, Health care and health services, Medicines, Sexual and reproductive health, Violence, Water, sanitation and hygiene

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to due process/fair trial, Right to health, Right to housing, Right to liberty and security of person, Right to life, Right to property

Facts

The complainants, two human rights organizations based in Sudan, the United Kingdom and Canada, alleged gross and systematic violations of human rights on the part of the Republic of Sudan and Government-supported militia forces in the Darfur region against indigenous tribes, including the Fur, Marsalit and Zaghawa. The organizations alleged that since General Omar Al-Bashir took control of Sudan in 1989, the region had been in a state of emergency that resulted in widespread violence, including arbitrary arrests and detainment, torture, rape of women and girls and extra-judicial summary executions. In addition to rampant violence, the claimants charged that Sudan violated the right to health of the indigenous tribe members by looting and destroying foodstuffs, crops and livestock and poisoning potable water sources in violation of Article 16 of the African Charter on Human and Peoples' Rights. They also claimed that the poisoning of wells and incidences of indiscriminate killings, torture, rape, forced evictions, displacement and destruction of property violated the right to life under Article 4 of the Charter, as well as freedom from psychological and physical torture, degrading and inhuman treatment under Article 5. The complainants also alleged violations of the right to security of the person and due process under Articles 6 and 7, respectively; violations of the right to free movement under Article 12(1) of the Charter; violations of the right to property under Article 14; and violations of the right to housing under Article 18(1), insofar as Sudan and associated militias destroyed homes and evicted members of the affected tribes. The complainants therefore asked the African Commission on Human and Peoples' Rights (Commission) to hold the Respondent State liable for the alleged human rights violations. They also asked that the Commission place the violations before the Heads of State of the African Union for their consideration under Article 58 of the Charter and that the Commission undertake a detailed study of the situation in Darfur for purposes of adopting Provisional Measures pursuant to Article 58(2) of the Charter.

The Commission declared the complaint admissible during its 39th Ordinary Session held from May 11-25, 2006, and decided at that time to consolidate the complaint with a related action of the Centre on Housing Rights and Evictions (COHRE). In its submission on the merits, the Respondent State claimed that it had begun addressing human rights through a framework under the Darfur Peace Agreement of May 5, 2006, which included making contributions to food, water and health development programs.

Decision and Reasoning

The Republic of Sudan violated Articles 1, 2, 4, 5, 6, 7(1), 12(1), 14, 16, 18(1) and 22 of the African Charter. Specifically, the Commission noted that Sudan violated the right to health under Article 16 insofar as it exposed members of the indigenous tribes in the Darfur region to "serious health risks" by destroying homes, livestock and farms, as well as by poisoning wells. According to the Commission, such actions amount to violations of Article 16 because the UN Committee on Economic, Social and Cultural Rights through its General Comment No. 14 has stated the right to health extends to "underlying determinants of health, such as, access to safe and portable water, and adequate supply of safe food, nutrition, and housing." Importantly, the Commission noted that the Government of Sudan was indirectly responsible for the same violations insofar as it failed to prevent third party militias from infringing the victims' enjoyment of such a conception of the right to health. The Government of Sudan also violated the right to life under Article 4, as well as the right to dignity and freedom from torture, cruel, inhuman or degrading punishment and treatment under Article 5 insofar as it directly perpetrated extra-judicial executions, torture, rape of women and girls, arbitrary arrests

and detentions, evictions and burning of houses and property. Sudan was also indirectly responsible for the same violations on the part of non-state actors by failing to protect the victims from the latter within its jurisdiction. Additionally, the various incidences of armed attacks, forced evictions, destruction of properties, houses, water wells, food crops and livestock, as well as the rape of women and girls, taken in totality, amounted to "both psychological and physical torture." The commission therefore recommended that the Government of Sudan take urgent measures to protect human rights in the Darfur region, including conducting official investigations into the violations, rehabilitating education, health, water and agricultural services, and prosecuting those responsible for the human rights violations.

Decision Excerpts

"147. It is the duty of the State to protect human life against unwarranted or arbitrary actions by public authorities as well as by private persons. The duty of the State to protect the right to life has been interpreted broadly to include prohibition of arbitrary killing by agents of the State and to strictly control and limit the circumstances in which a person may be deprived of life by State authorities. These include the necessity to conduct effective official investigations when individuals have been killed as a result of the use of force by agents of the State, to secure the right to life by making effective provisions in criminal law to deter the commission of offences against the person, to establish law-enforcement machinery for the prevention, suppression, investigation and penalisation of breaches of criminal law. In addition to the foregoing, the State is duty bound to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. In Article 19 v Eritrea this Commission noted that "arbitrariness is not to be equated with against the law but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process"

"148. States as well as non-state actors, have been known to violate the right to life, but the State has dual legal obligations, to respect the right to life, by not violating that right itself, as well as to protect the right to life, by protecting persons within its jurisdiction from non-state actors."

"208. In recent years, there have been considerable developments in international law with respect to the normative definition of the right to health, which includes both health care and healthy conditions. The right to health has been enshrined in numerous international and regional human rights instruments, including the African Charter."

"209. In its General Comment No.14 on the right to health adopted in 2000, the UN Committee on Economic, Social and Cultural Rights sets out that, "the right to health extends not only to timely and appropriate health care but also to the underlying determinants of health, such as, access to safe and portable water, an adequate supply of safe food, nutrition, and housing". In terms of the General Comment, the right to health contains four elements: availability, accessibility, acceptability and quality, and impose three types of obligations on States "to respect, fulfill and protect the right. In terms of the duty to protect, the State must ensure that third parties (non-state actors) do not infringe upon the enjoyment of the right to health."

"210. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. According to General Comment 14 "states should also refrain from unlawfully polluting air, water and soil, during armed conflicts in violation of international humanitarian law. States should also ensure that third parties do not limit people's access to health-related information and services, and the failure to enact or enforce laws to prevent the pollution of water [violates the right to health]. In its decision on Free Legal Assistance Group and Others v. Zaire the Commission held that the failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine constitutes a violation of Article 16. In the present communication, the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells exposed the victims to serious health risks and amounts to a violation of Article 16 of the Charter."

