



## Zimbabwe Human Rights NGO Forum v. Zimbabwe

Comm. No. 245/02 (2006).

**Country:** Zimbabwe

**Region:** Africa

**Year:** 2006

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

**Health Topics:** Mental health, Violence

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to life

### Facts

The Zimbabwe Human Rights NGO Forum, a coalition of twelve human rights organizations, alleged that the Government of Zimbabwe and supporters of the ruling ZANU (PF) political party engaged in a systematic campaign of intimidation leading up to a Constitutional Referendum held in February of 2000, as well as in the months following its fifth parliamentary elections in June of that year. According to the complainants, political violence, including torture and rape, targeted farm workers and civil servants such as medical personnel suspected of supporting the opposition party, the Movement for Democratic Change (MDC). The complainants also alleged that war veterans operating groups of militias primarily instigated the violence and that the Zimbabwe Republic Police (ZRP) and the Zimbabwe National Army (ZNA) and the Central Intelligence Organisation (CIO) facilitated the violence. Furthermore, the complainants alleged that officials within the ruling ZANU (PF) party condoned the use of violence for political gain and "exercised extensive de jure and de facto control" over the ZANU (PF) supporters and war veterans such that their actions should have been imputable to the Government of Zimbabwe. However, the complainants later adopted the position that, even if the aggressors did not constitute part of the State apparatus, the Government of Zimbabwe was nevertheless responsible for protecting its citizens from the harms of non-State third party actors.

The complainants alleged that Zimbabwe violated the right to non-discrimination enshrined in Article 2 of the Charter insofar as it denied victims the opportunity to freely express their political opinions. The complainant also claimed that state agents refused to record and investigate complaints of human rights abuses and therefore violated the Charter's equal protection provision, Article 3(2). Furthermore, the Complainant alleged numerous violations of the right to life as a result of extra-judicial executions, summary executions, as well as a result of physical attacks meant to intimidate victims. Importantly, the complainants asserted that the awareness of all levels of the Government of Zimbabwe of the acts or the fact that non-government actors, such as war veterans and ZANU (PF) supporters, were both irrelevant for establishing the violations of the right to life under international law. The Complainants also asserted widespread violations of the right to freedom from torture, cruel, inhuman or degrading punishment under the Charter. Specifically, it alleged that ZANU (PF) supporters and war veterans worked together to perpetrate extreme mental and physical suffering. These actors forced suspected MDC supporters into camps for "political re-education meetings," where they made them roll in the mud while pouring water over them and beat them severely with various objects. The aggressors humiliated one alleged victim by forcing him to masturbate and perform other sexual acts in public. Importantly, the Complainant emphasized that for purposes of analyzing Article 5 violations, the Commission should include actions that humiliate the individual or "force him to act against his will or conscience," in addition to acts that cause serious physical or psychological suffering. Such treatment, according to the Complainant, also violated Article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, the Complainant alleged violations of the right to personal security under Article 6 of the Charter, and violations of the rights to information, free association and free assembly under Articles 9, 10 and 11 of the Charter, respectively. Moreover, the Complainant alleged that by instituting Clemency Order No. 1 of 2000, which granted general amnesty for less serious politically motivated crimes leading up to the June 2000 general elections, Zimbabwe failed to provide sufficient protections of the rights enshrined in the Charter. Finally, as any violation of Charter rights constitutes a violation of Article 1 of the Charter, the Complainant also alleged that Zimbabwe violated Article 1 of the Charter.

In response to the allegations, the Government of Zimbabwe pointed to a lack of police records and medical reports of injuries sustained to indicate that the complainants could not substantiate a large number of the alleged abuses. Moreover, Zimbabwe asserted that the illegal acts of state agents are only imputable to the State when a public official uses its authority to perpetrate the violations and that the state can only be responsible where it has lacked diligence to prevent such violations. It also argued that, although ZANU (PF) is the ruling party, its acts could not be imputed to the Government of Zimbabwe because the party and the ruling government were two separate entities. Zimbabwe therefore argued that it could not be liable for any actions of individuals or organizations operating outside the domain of the State.

After considering that the Clemency Order prevented victims from bringing criminal actions and that the government also had instituted few actions against serious offenders, the African Commission considered the local remedies exhausted and declared the Complaint admissible at its 34th Ordinary Session in November of 2003.

## **Decision and Reasoning**

The Commission concluded that the Government of Zimbabwe violated Articles 1 (state obligations and legal effect) and 7(1) (right to due process) of the African Charter, but did not violate Articles 2 (freedom from discrimination), 3 (right to equal protection), 4 (right to life and integrity of the person), 5 (right to dignity), 6 (liberty and security of person), 9 (right of access to information), 10 (freedom of association), 11 (right of assembly), or 13 (right to participation in public policy).

Insofar as Clemency Order No. 1 of 2000 continued to encourage impunity and prevents victims from seeking effective remedy and compensation, Zimbabwe violated Article 7(1) (right to due process) of the Charter.

The ZANU (PF) supporters and war veterans did not constitute members of the State apparatus. Therefore, they could not commit acts imputable to the Government of Zimbabwe. According to the Commission, although a State does not directly act in violation of the Charter, it may nevertheless remain responsible for violations where it has failed to observe its duty to act with due diligence to protect its citizens from the actions of third parties. Also, the Commission explained that responsibility for a failure to exercise due diligence requires that the State condone a "pattern of abuse" by consistently failing to act. Such a determination will also consider the feasibility of the State to address allegations of third party abuses. In the present case, the Commission's own fact-finding mission found that Zimbabwe had taken some steps under the circumstances prevailing at the time, including investigating some cases of identified police misconduct and prosecuting some ZANU (PF) supporters and war veterans, to repudiate allegations of a systematic policy of condoning third party violations.

The Commission concluded that the Claimant had failed to show a pattern of discrimination necessary for a finding of an Article 2 violation of the Charter, as well as for a finding of equal protection violations under Article 3(2).

Similarly, insofar as Zimbabwe has prosecuted ZANU (PF) supporters and war veterans alleged to have violated of the right to life under Article 4 and for acts of torture, inhuman and degrading treatment under Article 5, the State could not be said to have acted without due diligence to protect its citizens. It therefore could not be held responsible for the Article 4 and 5 violations of the non-State actors.

The Commission called on Zimbabwe to establish a Commission of Inquiry to investigate the causes of violence that took place between February and June 2000 and to bring those responsible for the acts to justice. Zimbabwe was also asked to identify and adequately compensate the victims unable to obtain justice as a result of the general amnesty decree.

## **Decision Excerpts**

"135. Traditionally, international human rights law mostly talked to and about national governments or States. The need to look beyond the State or its agents as the primary subject of international law and the sole possible actor capable of impairing the enjoyment of the human rights of others, requires a term that captures the very many different kinds of individuals, groups or institutions whose behaviour, actions or policies have an effect on the enjoyment of human rights, and who can either be directly called to answer by the international system or for whom the government will be called to answer."

"136. The term 'non-state actors' has therefore been adopted by the international community to refer to individuals, organisations, institutions and other bodies acting outside the State and its organs. They are not

limited to individuals since some perpetrators of human rights abuses are organisations, corporations or other structuresâ€¦."

"143. Human rights standards do not contain merely limitations on State's authority or organs of State. They also impose positive obligations on States to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on States to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual and therefore not directly imputable to a State can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation."

"147. In fact, international and regional human rights standards expressly require States to regulate the conduct of non-state actors containing explicit obligations for States to take effective measures to prevent private violations of human rights. The doctrine of due diligence is therefore a way to describe the threshold of action and effort which a State must demonstrate to fulfill its responsibility to protect individuals from abuses of their rights. A failure to exercise due diligence to prevent or remedy violation, or failure to apprehend the individuals committing human rights violations gives rise to State responsibility even if committed by private individuals."

"160. It follows from the above that, by definition, a State can be held complicit where it fails systematically to provide protection of violations from private actors who deprive any person of his/her human rights. However, unlike for direct State action, the standard for establishing State responsibility in violations committed by private actors is more relative. Responsibility must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of violence or routinely disregard evidence of murder, rape or assault, States generally fail to take the minimum steps necessary to protect their citizens' rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses."

"200. ...It is generally believed that the single most important factor in the proliferation and continuation of human rights violations is the persistence of impunity, be it of a de jure or de facto nature. Clemency, it is believed, encourages de jure as well as de facto impunity and leaves the victims without just compensation and effective remedy. De jure impunity generally arises where legislation provides indemnity from legal process in respect of acts to be committed in a particular context or exemption from legal responsibility in respect of acts that have in the past been committed, for example, as in the present case, by way of clemency (amnesty or pardon). De facto impunity occurs where those committing the acts in question are in practice insulated from the normal operation of the legal system. That seems to be the situation with the present case."