

## **Institute for Human Rights and Development in Africa**

v.

### **Republic of Angola**

#### **Communication 292/2004**

#### **Decided at the 43rd ordinary session, May, 2008, 24th Activity Report**

1. The complaint is filed by the Institute for Human Rights and Development in Africa (IHRDA) on behalf of Mr Esmaila Connateh and 13 other Gambians deported from Angola in March, April and May of 2004.
2. The complaint alleges the capricious arrest and deportation, in violation of their human and peoples' rights, of the said Gambians who were alleged to have been legally residing and working in Angola.
3. It is alleged that the government of Angola put into effect the *Operação Brilhante*, a campaign with the objective of expelling foreigners from Angola. Many foreigners were deported from many areas especially those in the diamond mining areas. The complainants, who are of Gambian nationality, alleged that they were arbitrarily arrested, detained and later deported from Angola without any legal protection. It is estimated that 126 247 foreigners were deported from Angola.
4. The complaint further alleges that those expelled were maltreated due to their nationalities and origin, and in the process the Angolan authorities confiscated their official documents, including passports, visas, residence permits, and work authorization. In some cases, money was demanded from them, and those who could not afford the money were seriously beaten.
5. The complainant alleges further that those expelled were detained in detention centres in different areas of Angola including Cafunfu, Kisangili, Saurimo, and Launda, under conditions which were not suitable for human habitation. It is alleged that the detention camps were initially used to house animals and contained a plethora of animal waste. The detainees were faced with harsh conditions such as: no medical attention; lack of food; poor sanitation. For instance, there were only two buckets of water provided for 500 detainees to use in the bathroom; the bathroom was not separated from the sleeping and eating areas.
6. The complaint further alleges that the Angolan armed forces raided villages where the victims resided. They were arrested in their homes as well as on the streets at checkpoints. There were no arrest warrants issued or any reason given for the arrests. Moreover, the victims were not provided access to courts of law in order to challenge the reasons for their arrests.

7. It is further alleged that the victims' property was seized and they were denied to take their property during the alleged deportation. Some of the items that were confiscated from them they left behind, and that were confiscated from them include: television sets, shoes, wristwatches, clothing, generators, television, furniture and cash.

8. According to the complainant, although the victims had work permits and relevant documents to engage in mining activities in Angola, they were arrested on the mere premise that foreigners were not allowed to engage in mining activities in the country.

### **Complaint**

9. The complainant alleges violation of articles 1, 2, 3, 5, 6, 7(1)(a), 12(4), (5), 14 and 15 of the African Charter on Human and Peoples' Rights.

### **Procedure**

10. The complaint was dated 4 October 2004 and received at the Secretariat of the African Commission on 6 October 2004.

11. At its 36th ordinary session held in Dakar, Senegal from 2 November to 7 December 2004, the African Commission examined the complaint and decided to be seized thereof.

12. On 23 December 2004, the Secretariat wrote to the complainant and respondent state informing them of this decision and requesting them to forward their written submissions on admissibility before the 37th ordinary session of the Commission.

13. Similar reminders were sent out to the parties on 2 February and 4 April 2005.

14. On 14 April 2005, the Secretariat received the complainant's written submission on admissibility, which was forwarded to the respondent state on 23 April 2005.

15. At its 37th ordinary session held in Banjul, The Gambia from 27 April to 11 May 2005, the African Commission considered this communication and deferred its decision on admissibility to the 38th ordinary session.

16. On 12 May 2005, the Secretariat wrote to both parties to inform them of this decision and requested the respondent state to forward its written submissions on admissibility before the 38th ordinary session.

17. On 12 September 2005, the Secretariat sent a reminder to the respondent state.

18. At the 38th ordinary session held from 21 November to 5 December 2005 in Banjul, The Gambia, the African Commission considered the communication and deferred its decision on admissibility to the 39th ordinary session to allow the respondent state more time to forward its submissions.

**19.** On 30 January 2006, the Secretariat wrote to the complainant informing it of this decision.

**20.** On 5 February 2006, a similar notification was emailed and also sent by DHL to the respondent state also requesting it to forward its written submissions on admissibility.

**21.** At its 39th ordinary session, the African Commission considered this communication and declared it admissible.

**22.** The Secretariat of the African Commission informed the parties of this decision and requested them to forward their submissions on the merits before the 40th ordinary session. The respondent state's delegates were also provided with copies of this decision during the 39th ordinary session.

**23.** On 21 August 2006, the Secretariat of the African Commission received the submissions of the complainant on the merits, which was forwarded to the respondent state.

**24.** At its 40th ordinary session, the African Commission deferred the consideration of the communication on the merits pending the written submission on the same by the respondent state.

**25.** A copy of the complainant's submission on merits was availed to the delegates of the respondent state at the session.

**26.** At the request of the Angolan delegates present at the second brainstorming meeting on the African Commission in Maseru, Lesotho in April this year, the Secretariat of the African Commission emailed a copy of the complainant's written submission to the respondent state's embassy in Addis Ababa, Ethiopia in May 2007.

**27.** At its 41st ordinary session, the African Commission deferred the consideration of the matter to the 42nd ordinary session.

**28.** On 8 July 2007, the Secretariat of the African Commission notified both parties of this decision.

**29.** On 11 September 2007, the Secretariat of African Commission wrote to the respondent state requesting it to forward to the African Commission its written submissions and/or observations on the merits at its earliest convenience.

**30.** The respondent state is yet to forward its written submission on the merits.

**31.** At its 42nd ordinary session, the Commission considered the communication and decided to defer it to its 43rd session due to lack of time.

32. By *note verbale* of 19 December 2007 and letter of the same date, both parties were notified of the Commission's decision.

## Law

### Admissibility

33. The complainant submitted its written submissions on the merits. The respondent state, however, failed to respond to the various notifications addressed to it in the context of this communication.

34. In the face of the state's failure to address itself to the complaint filed against it, the African Commission has no option but to proceed with its consideration of the communication in accordance with its Rules of Procedure. In communications 155/1996, *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* [(2001) AHRLR 60 (ACHPR 2001)], and 159/1996 *Union Interafricaine des Droits de l'Homme and Others v Angola* [(2000) AHRLR 18 (ACHPR 1997)], the African Commission decided that it would proceed to consider communications on the basis of the submission of complainants and information at its disposal, even if the state fails to submit.

35. In its submission on admissibility, the complainant alleges that the Angolan government embarked on a campaign termed *Operação Brilhante*, which was characterised by the systematic process of identifying and rounding up of foreigners working and residing in the diamond-mining regions of Angola, resulting in the detention and deportation of the victims. It avers that tens of thousands of non-nationals were deported from Angola, including Mr Esmaila Connateh and 13 other Gambians on whose behalf the present complaint is filed. Their immediate arrest, and the absence of prior notice being given to them, resulted in the automatic loss of their property. And during the course of the arrests, Angolan authorities confiscated and destroyed the identity documents belonging to the complainants, including their Gambian passports and visas, residence permits and work permits which explicitly authorized the Gambians to live and work in Angola. Physical property was inevitably abandoned with no possibility for the transfer of such to The Gambia and large amounts of money were extorted from the foreigners by the Angolan authorities. The complainant alleges that the victims were detained for several weeks, and some for months in a series of detention centres within Angola, under conditions below acceptable minimum human rights standards. Principles of due process of law and respect for international human rights norms were not respected during the process from arrest to their deportation.

36. The complainant further avers that the deportees were not given any opportunity to contest or challenge the irregularity and illegality of the detention and expulsion by the Angolan government in a court of law; that they did not have access to legal counsel provided at any stage before their deportations; that no national local remedy was made available to the Gambian nationals at any stage prior to the deportations. It further claims that as a matter of physical impossibility national remedies are no longer available to the Gambians as they are now no longer in the territory of Angola.

**37.** The African Commission notes that there are no indications in the submissions of the complainant that warrant a declaration of inadmissibility of the present communication. In terms of article 56(5) of the African Charter, however, the African Commission has further examined the assertions of the complainant on the matter as outlined in the preceding paragraphs. Article 56(5) stipulates that communications shall be considered only if they ‘are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged’.

**38.** It is a well-established rule of customary international law that before international proceedings are instituted against a state, the various domestic remedies provided by the state should have been approached. This is also known as the exhaustion of local remedies rule, which is a principle under international law permitting states to solve their internal problems in accordance with their own constitutional procedures before accepted international mechanisms can be invoked.

**39.** This, however, is not a strict requirement that must always be met. In the present communication, the African Commission notes that there were no domestic remedies available to the deportees as they were rounded up, detained and deported in such a manner that they could not gather their personal belongings or entrust same with friends and relatives for safe keeping, let alone be able to seize the appropriate authorities to challenge the manner of their detention, and subsequent expulsion.

**40.** Time and again, in communication 71/1992, *Recontre Africaine pour la Défense des Droits de l’Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], the African Commission held that the mass expulsions, particularly following arrest and subsequent detentions, deny victims the opportunity to establish the legality of these actions in the courts. In the present case, there is no indication as to whether the deportees were accorded the opportunity to contact their families, much less attorneys, thereby making the requirement of exhausting local remedies impracticable.

**41.** It is not a contested fact that the complainants are no longer in Angola, the territory where the action arose, and that they are unable to return thereto to seek redress. This, in accordance with the Commission’s decisions in communications 101/1993, *Civil Liberties Organisation (in respect of Bar Association) v Nigeria* [(2000) AHRLR 186 (ACHPR 1995)] and 215/1998, *Rights International v Nigeria* [(2000) AHRLR 254 (ACHPR 1999)], constitutes constructive exhaustion of domestic remedies per the jurisprudence of the African Commission, and the latter could only but exempt the complainant from this particular requirement. In communication 159/96, *Union Interafricaine des Droits de l’Homme and Others v Angola*, the Commission arrived at a similar decision, holding that it would be impractical to require the complainants to return to Angola for purposes of seeking redress in the national courts.

**42.** For the above reasons, the African Commission declares this communication admissible.

## **Decision on the merits**

43. The complainant prays the African Commission to find the respondent state in violation of articles 1, 2, 3, 5, 6, 7(1)(a), 12(4), 12(5), 14 and 15 of the African Charter as a result of the alleged systematic arrest, detention and subsequent deportation of thousands of foreigners from Angolan territory, including at least 205 Gambian nationals.

44. The African Commission will examine the allegations of the complainant under each of the provisions of the African Charter alleged to have been violated by the respondent state.

### **Alleged violations of article 3(2)**

45. The complainant alleges that the mass arrest, detention and expulsion of the Gambians from Angola violated their right to equal protection of the law. Equal protection of the law under article 3(2) relates to the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts both in procedures and in the substance of the law. It is akin to the right to due process of the law, but in particular, applies to equal treatment as an element of fundamental fairness.

46. In terms of article 60 of the Charter, this Commission can also be inspired in this regard by the famous case of *Brown v Board of Education of Topeka*,<sup>[1]</sup> in which the Chief Justice of the United State of America, Earl Warren, argued that ‘equal protection of the law’ refers to ‘the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness’.<sup>[2]</sup>

47. In order for a complainant to establish a successful claim under article 3(2) of the Charter, therefore, it must show that the respondent state had not given the victims the same treatment it accorded to the others or that, the respondent state had accorded favourable treatment to others in the same position as the victims.

48. In the present communication, the Commission has examined the evidence submitted by the complainant and is of the view that it (the complainant) has not demonstrated the extent to which the victims in the present communication were treated differently from the other nationals arrested and detained under the same conditions. The Commission thus does not find the respondent state to have violated article 3(2) of the African Charter.

### **Alleged violation of article 5**

49. Article 5 of the African Charter provides that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and

degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

**50.** The complainant alleges that the condition of their detention in the detention centres were inhumane as the facilities were overcrowded and unsanitary. According to the complainant, the detention centre at Kisangili had been used to house animals just prior to its conversion into a detention centre to hold approximately 300 people and few measures had been taken to accommodate the detainees, including cleaning out the animal waste. The complaint further alleges that since the Gambians, at any time from arrest, detention, leading to their expulsion, were not informed of the reasons of their detention and its duration thereof, which in itself, the African Commission had held, constituted a ‘mental trauma’.<sup>[3]</sup>

**51.** In further corroborating the failure of the respondent state, the complaint alleges that guards frequently beat the Gambians and extorted money from them. Food was not regularly provided and medical attention was not readily available, despite repeated requests. Complainants were transported between detention centres in overcrowded cargo planes and lorries. The detention centre in Saurimo had no roof or walls and complainants were exposed to the elements of weather for five consecutive days. At the Cafunfu detention centre, bathroom facilities consisted solely of two buckets for over 500 detainees, and these were located in the same one room where all detainees were compelled to eat and sleep. This, for the African Commission, is clearly a violation of article 5 of the African Charter since such treatment cannot be called anything but degrading and inhuman.

**52.** In communication 224/1998, *Media Rights Agenda v Nigeria* [(2000) AHRLR 262 (ACHPR 2000)], the African Commission held the terms ‘cruel, inhuman or degrading punishment or treatment’ to be ‘interpreted so as to extend to the widest possible protection against abuses, whether physical or mental’,<sup>[4]</sup> referring to any act ranging from denial of contact with one’s family and refusing to inform the family of where the individual is being held,<sup>[5]</sup> to conditions of overcrowded prisons and beatings<sup>[6]</sup> and other forms of physical torture, such as deprivation of light, insufficient food and lack of access to medicine or medical care.<sup>[7]</sup> The African Commission also reiterates its position taken in *Huri-Laws v Nigeria*, in which it ruled that such ‘treatment meted out to the victim’ constituted a breach of article 5 of the African Charter, as well as the Minimum Standards of Treatment for Prisoners as laid out by the United Nations.<sup>[8]</sup>

**53.** There is nothing from the respondent state to counter these allegations and the African Commission, thus, is of the view that Angola is in violation of article 5 of the African Charter.

### **Alleged violation of article 6**

**54.** Article 6 of the African Charter provides for the prohibition of arbitrary arrest. In its Resolution on the Right to Recourse Procedure and Fair Trial, the African Commission further states that ‘persons who are arrested shall be informed at the time of arrest, in a

language which they understand of the reason for their arrest and shall be informed promptly of any charges against them.’[9] Furthermore, the prohibition of arbitrary arrest includes prohibition of indefinite detention[10] and arrests and detentions ‘based on grounds of ethnic origin alone’.[11]

55. In the present case, there is nothing from the respondent state to indicate that the manner of victims’ arrests and subsequent expulsion was not arbitrary as alleged by the complainant. As the complainant puts it, at no point were any of the victims shown a warrant or any other document relating to the charges under which the arrests were being carried out. The African Commission thus finds the respondent state to have violated article 6 of the African Charter.

#### **Alleged violation of article 7(1)(a)**

56. Article 7(a) of the African Charter provides that:

Every individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

57. The complaint alleges that prior to expulsion, the complainants were held in several Angolan detention centres, including Canfunfu, Saurimo and Kisangili. They were held there arbitrarily as they knew of no laws forbidding their residence and work in Angola prior to their arrest, and that during their detention they were afforded no explanations as to their arrest and detention and no the opportunity to speak to a lawyer or go before a judge.

58. The complaint alleges that circumstances of this case made it impossible for complainants to access the Angolan courts or other national organs to question their arrest, detention and deportation. The abrupt manner in which they were arrested, detained and deported denied them of the opportunity to engage a lawyer to take their case to court to challenge the regularity and legality of their arrest, detention and deportation. The African Commission has ruled that every individual has the right to appeal to competent national organs for violations of his/her fundamental rights, and as such, if one is detained without charge or trial[12] and there exists no legal remedy to challenge the detention,[13] it is a clear violation of article 7(1)(a).

59. In communication 71/1992, *Recontre Africaine pour la Défense des Droits de l’Homme v Zambia*, where the deportees similarly were denied ‘the opportunity to seize the Zambian courts to challenge their detention or deportation’, the African Commission found this to constitute violation of the deportees’ rights under article 7.[14] Similarly, in communication 159/1996, *Union Interafricaine des Droits de l’Homme and Others v Angola*, the African Commission held that the state failed to afford the victims with the opportunity to challenge the matter before the competent jurisdictions which should have

ruled on their detention, as well as on the regularity and legality of the decision to expel them was a violation of article 7(1)a of the African Charter.

60. The African Commission is thus of the view that, given the facts before it, the respondent state is in violation of article 7(1)(a) of the African Charter.

#### **Violation of article 12(4) of the African Charter on due process before expulsion**

61. Article 12(4) of the African Charter provides that ‘a non-national legally admitted in a territory of a state party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law’.

62. The complaint alleges that the victims in the present communication were subjected to arbitrary arrest, detention and subsequent expulsion and were denied due process of law before their expulsion from Angola. Prior to their deportation, complainants were not taken before a court of law to answer any charge concerning their activities and stay in Angola or without a decision or order made in accordance with the applicable laws. It is alleged by the complainants that the victims were legally in the territory of the respondent state, and when they presented their legal documents to the authorities, they were either confiscated or destroyed. The African Commission finds no contrary submission from the respondent state to challenge these allegations.

63. In communication 159/1996, *Union Interafricaine des Droits de l’Homme and Others v Angola*, the African Commission stated that although African states may expel non-nationals from their territories, the measure that they take in such circumstances should not be taken at the detriment of the enjoyment of human rights, and that while the Charter does not bar a state’s right to deport non-nationals *per se*, it does require deportations to take place in a manner consistent with the due process of law.<sup>[15]</sup>

64. The African Charter’s requirement of due process as outlined above is also shared by similar systems elsewhere. The Human Rights Committee under the International Covenant on Civil and Political Rights, for instance, had expressed a similar concern over the treatment of aliens being deported from Switzerland when it held the latter liable for degrading treatment and use of excessive force resulting on some occasions in the death of the deportee during deportation of aliens.<sup>[16]</sup> The Committee recommended that Switzerland should ‘ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant’ and that ‘restraint methods do not affect the life and physical integrity of the persons concerned’.<sup>[17]</sup>

65. The African Commission notes that the import of this provision under the African Charter is to ensure that due process is followed before legally admitted non-nationals are expelled from a member state. Very clearly, the situation as presented by the complainant did not afford those expelled due process of law for protection of the rights that have been alleged to be violated by the respondent state and that they were not allowed access to the remedies under domestic law to at least challenge, if not reverse, their

expulsion.<sup>[18]</sup> The African Commission thus holds the respondent state in violation of the provisions of article 12(4) of the African Charter.

### **Alleged violation of article 12(5)**

**66.** Article 12(5) of the African Charter reads ‘the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups’.

**67.** In the present communication, the complainant alleges that the group of Gambians was expelled from Angola *en masse* on 23 May 2004.<sup>[19]</sup> In addition to the 217 Gambians, tens of thousands of other non-nationals have been expelled from Angola in the same year. The complaint further alleges that the Angolan government itself reported that 126 247 foreigners had been repatriated as of 14 May 2004. It quotes a United Nations estimate that 3 500 of this number originate from West Africa, with much of the remainder coming from the Democratic Republic of Congo.<sup>[20]</sup> It adds that nationals from many different countries have been affected, including individuals from the Democratic Republic of Congo, Guinea Conakry, Mali, Mauritania, Côte d’Ivoire, Senegal and Sierra Leone. These expulsions were hastily carried out, permitting little in the way of advance planning and coordination of resettlement assistance for those expelled.<sup>[21]</sup> It claims that the number, coupled with the subsequent expulsions under such conditions constitute mass expulsions under article 12(5) of the African Charter.

**68.** The African Commission has ruled that ‘mass expulsion was a special threat to human rights’, adding that a government action specially directed at specific national, racial, ethnic or religious groups is generally qualified as discriminatory in the sense that none of its characteristics has any legal basis or could constitute a source of particular incapacity.<sup>[22]</sup> Similarly, the African Commission, held that:

African states in general and the Republic of Angola in particular are faced with many challenges, mainly economic. In the face of such difficulties, states often resort to radical

Measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken at the detriment of the enjoyment of human rights. Mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations, constitute special violation of human rights.<sup>[23]</sup>

**69.** The respondent state has failed to advance any argument to justify its actions. As shown above, the position of the African Commission regarding mass expulsions is clear. And as the complainant avers, ‘simply because the victims were a part of a larger group of non-nationals, not just Gambians, but also other West and Central Africans, does not negate discrimination on the part of the respondent state’, and that the fact that ‘so many aliens received the same treatment is tantamount to an admission of a violation of article 12(5)’. Moreover, the fact that the deportees as a group were arrested over a period of several months at different places and may have been served with deportation orders on

different dates does not qualify, for purposes of the African Commission, to be sufficient to negate the *en masse* element of the expulsions.<sup>[24]</sup> The African Commission underscores that any expulsions or deportations must comply with the human rights obligations found in the African Charter. Accordingly, the African Commission finds the respondent state in violation of article 12(5) of the African Charter.

70. The African Charter is not unique in prohibiting mass expulsions. The European Convention on Human Rights provides some protection against expulsion. The fourth Protocol to the same Convention similarly prohibits collective expulsion of aliens as well as the expulsion of nationals from their own state. Its seventh Protocol prohibits expulsion of an alien lawfully resident in a state except when a decision to that effect is taken in accordance with law. Here, the person concerned is entitled to submit reasons against the expulsion, have the case reviewed and be represented for these purposes before a competent authority.

#### **Alleged violation of article 14**

71. The complaint alleges that members of the Angolan armed forces raided villages where victims were living and began shooting live ammunition down the street, deliberately targeting items that would explode, such as generators. In the resulting confusion, mass numbers of people were arrested, including some of the complainants. Other complainants were arrested at checkpoints on the street. Violence frequently accompanied these arrests and victims' possessions were confiscated. In several cases, Angolan authorities attempted to extort money from complainants before proceeding to arrest them. Following their arrest, complainants were immediately taken to various detention centres where they were kept until their expulsion from the country.

72. The complainant alleges that in the course of the arrest, victims' property was confiscated by Angolan authorities, including television sets, shoes, wrist watches and clothing. It further claims that the abruptness of their arrest forced them to leave behind all property in Angola giving them no opportunity to make arrangements regarding the transport or disposal of their belongings.

73. The African Commission is of the view that the actions of the respondent state as shown in the preceding paragraphs not only denied fair treatment of the victims with opportunity to challenge their deportation but also failed to allow them opportunity to deal with their belongings. The complainant argues and the African Commission concurs that the type of deportations involved in the present case (ie mass expulsions without due process) challenge a series of rights and protections afforded by the Charter, including the right to property, and, as such, the measures taken by the respondent state in its arrest, detention and subsequent deportation of the victims 'called into question a whole series of rights recognized and guaranteed in the Charter', including the right to property. While the right to property under the African Charter is not absolute, the respondent state has not provided evidence to prove that its actions were necessitated either by public need or community interest. Without such a justification and the provision of adequate compensation determined by an impartial tribunal of competent jurisdiction, the African

Commission finds the respondent state's actions in violation of the right to property under article 14 of the African Charter.<sup>[25]</sup>

### **Alleged violation of article 15**

74. Article 15 of the African Charter provides that: 'Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work'.

75. The complainant alleges that the victims were in possession of official documents, including passports, visas, work and residence permits, allowing them to stay and work legally in Angola. The victims were required on a monthly basis to pay for their work permits that enabled them to continue working in the mines. Nevertheless, they were arrested on the grounds that foreigners were not permitted to engage in mining activities in Angola.

76. As indicated above, the respondent state has regrettably not forwarded any arguments to refute any of the allegations made in this communications including the alleged violation under article 15 of the African Charter. The facts indicate and the African Commission agrees that the abrupt expulsion without any possibility of due process or recourse to national courts to challenge the respondent state's actions severely compromised the victims' right to continue working in Angola under equitable and satisfactory conditions. Accordingly, the African Commission holds that the respondent state's actions of arbitrary arrest, detention and subsequent deportation resulted in persons who were lawfully working in Angola losing their jobs in a manner that is in violation of article 15 of the African Charter.

### **Alleged violation of article 2**

77. The complaint alleges that the circumstances under which the victims were expelled constitute a violation of article 2 of the African Charter in that the victims had been living in Angola for varying lengths of time, after having obtained official documentation, including visas, residence and work permits, in order to lawfully reside and work in Angola. Several of the victims were engaged in diamond mining and had paid appropriate sums of money each month to obtain the required licenses. Nevertheless, despite possession of proper documentation, the victims were arrested, detained and expelled, and their property and documentation were confiscated, specifically because they were foreigners.

78. In interpreting the African Charter, the African Commission relies on its own jurisprudence, and as provided by articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards. In the present case, the African Commission has dealt with communications alleging similar violations of freedom from discrimination. Article 2 of the African Charter basically forms the anti-discrimination principle that is essential to

the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises.[26]

**79.** The facts as presented by the complainant are not challenged by the respondent state as the latter has not sent any submission whatsoever. It appears that the victims were targets of a government action which aimed at rounding up and deporting foreigners or non-nationals. Although governments have the right to regulate entry, exit and stay of foreign nationals in their territories, and as the complainant rightly avers that although the African Charter does not bar deportations *per se*, the African Commission reaffirms its position that ‘a state’s right to expel individuals is not absolute and it is subject to certain restraints’, one of those restraints being a bar against discrimination based on national origin. As mentioned above, there is no submission from the respondent state countering this in that the victims belonged to a larger group which did not consist of only Gambian nationals, but nationals of several foreign countries. However, even if such an argument were to be advanced here, the Commission has previously ruled that ‘the simultaneous expulsion of nationals of many countries does not negate the charge of discrimination’.

**80.** From the foregoing, it is clear that the various violations allegedly committed by the actions of the respondent state have, as their target, foreigners or non-nationals. This, in the opinion of the African Commission, is a clear violation of the provisions of the African Charter under article 2, which encapsulates crucial human rights holding at bay such practices as that of the respondent state. Rights under the African Charter are to be enjoyed by all, without discrimination, by citizens and non-national residents alike. Although some rights, like the right to vote and to stand for election, are reserved for citizens of the particular state, human rights are in principle to be enjoyed by all persons.[27]

### **Alleged violation of article 1**

**81.** Article 1 of the African Charter reads:

The member states of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

**82.** The complainant alleges that a violation of any provision of the Charter automatically means a violation of article 1, so that ‘if a state party to the Charter fails to recognise the provisions of the same, there is no doubt that it is in violation of this article.’[28] The African Commission is of the view that state parties to the African Charter (including the respondent state) have the obligation of recognising the rights, duties and freedoms enshrined in the Charter, as well as the responsibility of providing an environment in which those rights and freedoms can be enjoyed through the adoption of legislative or other measures that give effect to them.

**83.** The African Commission had held that article 1 of the African Charter proclaims a fundamental principle that not only do the states parties recognise the rights, duties and

freedoms enshrined in the Charter, they also commit themselves to respect them and to take measures to give effect to them.<sup>[29]</sup> In other words, if a state party fails to ensure respect of the rights contained in the African Charter, this constitutes a violation of the African Charter even if the state or its agents were not the perpetrators of the violation. The actions of the respondent state constitute a violation of certain provisions of the Charter and hence are in violation of the provisions of article 1 of the African Charter, since instead of adopting measures to promote and protect human rights, the respondent state pursued a course of action which failed to take into account the various safeguards envisioned by the African Charter.

**84.** The African Commission wishes to emphasise that there is nothing in the African Charter that requires member states of the African Union to guarantee for non-nationals an absolute right to enter and/or reside in their territories. This, however, does not in any way mean that the African Charter gives member states the free hand to unnecessarily and without due process deal with non-nationals to such an extent that they are denied the basic guarantees enshrined under the African Charter for the benefit of everyone. Member states may deny entry to or withdraw residence permits from non-nationals for various reasons including national security, public policy or public health. Even in such extreme circumstances as expulsion, however, the affected individuals should be allowed to challenge the order/decision to expel them before competent authorities, or have their cases reviewed, and have access to legal counsel, among others. Such procedural safeguards aim at making sure that non-nationals enjoy the equal protection of the law in their country of residence, ensure that their daily lives are not arbitrarily interfered with, and that they are not sent back/deported/expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death, among others. For these reasons, the African Commission finds the respondent state in violation of articles 1, 2, 5, 6, 7(1)(a), 12(4), 12(5), 14 and 15 of the African Charter, but holds that there was not enough evidence to establish a violation of article 3 of the Charter.

**85.** In its submission, the complainant pleads the African Commission to order the respondent state to remedy the violations enumerated above by way of , including but not limited to, replacing the travel and work documents of the complainants, which were taken from them at the time of their arrest prior to their expulsion; reinstating the victims to works they had been lawfully engaged in and paying compensation to the victims as a result of unlawful mass expulsion; ensuring the restitution of complainants' property forcibly taken from them at the time of their arrest prior to their expulsion, providing for compensation to those complainants physically harmed as a result of their inhumane arrest and detention and clarify and make the necessary changes in its deportation procedures, such that the process from arrest through detention and deportation comply with the provisions of the African Charter on Human and People's Rights.

**86.** The African Commission recommends that the respondent state takes the necessary measures to redress the violations enumerated in the preceding paragraphs, taking into account its obligations under article 1 of the African Charter and the exigencies of the situation.

87. The African Commission notes that the present communication is not the first in which it found similar violations of the human rights of non-nationals in the context of mass expulsions/deportations by the Republic of Angola. It, therefore, recommends that the Republic of Angola should:

- Ensure that its immigration policies, measures and legislations do not have the effect of discriminating against persons on the basis of race, colour, descent, national, ethnic origin, or any other status, and particularly take into account the vulnerability of women, children and asylum seekers;
- Take measures to ensure that all persons in detention are provided with proper medical examination and medical treatment and care;
- Ensure regular supervision or monitoring of places of detention by qualified and/or experienced persons or organisations;
- Put in place mechanisms allowing all detained persons access to effective complaint procedures regarding their treatment with a view to curb, in particular, cases of physical and/or psychological abuse;
- Put in place procedural safeguards or clear procedures/policies that guarantee for all persons deprived of their liberty (nationals and non-nationals alike) effective access to competent authorities such as administrative tribunals and courts responsible for prison/detention oversight and/or review;
- Establish a Commission of inquiry to investigate the circumstances under which the victims were expelled and ensure the payment of adequate compensation of all those whose rights were violated in the process;
- Institute safeguards to ensure that individuals are not deported/expelled to countries where they might face torture or their lives could be at risk;
- Allow representatives of the African Commission, relevant international organisations, ICRC, NGOs, concerned consulates and others access to detainees and places of detention, including to those where non-nationals are held;
- Institute human rights training programmes for law enforcement agencies and relevant civil servants dealing with matters involving non-nationals on non-discrimination, due process, and the rights of detainees, among others;
- The African Commission further requests that the Republic of Angola report back to it, at a later stage, measures it has taken to implement the recommendations made in this communication.

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[1] 347 US 483 (1954).

[2] [www.legal-explanations.com](http://www.legal-explanations.com).

[3] See the Commission's decision in communication 225/1998, *Huri-Laws v Nigeria* [(2000) AHRLR 273 (ACHPR 2000)], para 27.

[4] Communication 224/1998, *Media Rights Agenda v Nigeria*, para 71.

[5] See the Commission's decision in communications 48/1990, 50/1991, 52/1991 and 89/1993, *Amnesty International and Others v Sudan* [(2000) AHRLR 297 (ACHPR 1999)] para 54.

- [6] See the Commission's decision in communications 64/1992, 78/1992, *Achuthan and Another v Malawi* [(2000) AHRLR 144 (ACHPR 1995)] para 7.
- [7] See the Commission's decision in communication 151/1996, *Civil Liberties Organisation v Nigeria* [(2000) AHRLR 243 (ACHPR 1999)] para 27. See also, at the international level, the UN Human Rights Committee's views in communication 253/1987, *Kelly v Jamaica* where it held that respect of the inherent dignity of the human being required provisions of adequate medical care and food and basic sanitation facilities during detention. In *Kalenga v Zambia*, the UN Human Rights Committee went further to state that where the complainant was denied access to food and medical assistance during his detention, the detention did not respect the inherent dignity of the human being.
- [8] See communication 232/1999, *Ouko v Kenya* [(2000) AHRLR 135 (ACHPR 2000)] para 24 in which the Commission held that a violation of the Minimum Standards of Treatment in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment effectively constitutes a violation of article 5 of the Charter.
- [9] See *Media Rights Agenda v Nigeria* para 43.
- [10] See *Free Legal Assistance Group and Others v Zaire*, 25/89, 47/90, 56/91, 100/93 [(2000) AHRLR 74 (ACHPR 1995)] para 42.
- [11] See *Organisation Mondiale Contre la Torture and Others v Rwanda*, 27/89, 46/91, 49/91, 99/93 [(2000) AHRLR 282 (ACHPR 1995)] para 29.
- [12] See communications 143/1995 and 150/1996, *Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 235 (ACHPR 1999)], para 28.
- [13] See *Huri-Laws v Nigeria* para 45.
- [14] See communication 71/1992, *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*, para 30.
- [15] As above para 23.
- [16] UN Human Rights Committee, ICCPR, A/57/40 vol I (2002) para 76 (13).
- [17] As above.
- [18] Communication 232/99, *Ouko v Kenya*.
- [19] See, for instance, Ebrima JT Kubaji '217 Gambians deported from Angola', *The Daily Observer*, 24 May 2004 at 24; Lugard WE Osayande 'Consular meets deportees', *The Daily Observer*, 27 May 2003 24 (both available at <http://www.observer.gm>).
- [20] 'Angola - Guinea: Deported Guineans complain of ill treatment', UN Office for the Coordination of Humanitarian Affairs, 11 June 2004, at <http://www.irinnews.org/print.asp?ReportID=41644>.
- [21] 'Humanitarian situation in Angola Monthly analysis Apr 2004', The United Nations Office of Coordination of Humanitarian Affairs, 30 Apr. 2004 at <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/41292ac0a994c0eb85256e9a00697388?OpenDocument> ('Unfortunately, the entire process of this round of 'Operação Brilhante' was poorly executed, without respect for the dignity of those involved and rife with abuses, significant human rights abuses').
- [22] 159/96, *Union Interafricaine des Droits de l'Homme and Others v Angola*.

- [23] As above.
- [24] As above, para 27.
- [25] See *Huri-Laws v Nigeria* para 53.
- [26] See communication 241/2001, *Purohit and Another v The Gambia* [(2003) AHRLR 96 (ACHPR 2003)] para 49.
- [27] See, for example, General Recommendation 30 of the UN Committee on the Elimination Racial Discrimination (CERD), HRI/GEN/1/Rev.7/Add.1, para 3.
- [28] Communications 147/95 and 149/96, *Jawara v The Gambia* [(2000) AHRLR 107 (ACHPR 2000)], para 46.
- [29] Communication 231/99 *Avocats Sans Frontières (on behalf of Bwampamyé) v Burundi* [(2000) AHRLR 48 (ACHPR 2000)] para 31.