

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-Second Ordinary Session
2-11 November 1997

**UNION INTER AFRICAINE DES DROITS DE L'HOMME, FEDERATION
INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME, RENCONTRE
AFRICAINNE DES DROITS DE L'HOMME, ORGANISATION NATIONALE DES
DROITS DE L'HOMME AU SÉNÉGAL AND ASSOCIATION MALIENNE DES
DROITS DE L'HOMME**

v.
ANGOLA

DECISION

BEFORE: CHAIRMAN: Mr. Youssoupha Ndiaye
VICE CHAIRMAN: Dr. Vera V. Duarte Martins
COMMISSIONERS: Dr. Mohamed Hatem. Ben Salem, Prof. Emmanuel V.O.
Dankwa, Dr. Nyameko Barney Pityana, Dr. Ibrahim Badawi El Sheikh, Mrs.
Julienne Ondziel-Gnelenga, Mr. Kamel Rezzag-Bara, Prof. Isaac Nguema
Citation: Union Inter Africaine des Droits de l'Homme v. Angl., Comm. 159/96, 11th
ACHPR AAR Annex II (1997-1998)
Publications: IHRDA, Compilation of Decisions on Communications of the African
Commission On Human and Peoples' Rights Extracted from the Commission's
Activity Reports 1994-2001, at 10 (2002); Documents of the African
Commission on Human and Peoples' Rights, at 615 (Malcolm D. Evans &
Rachel Murray eds., 2001; (2000) AHRLR 18 (ACHPR 1997)

THE FACTS

1. The communication is jointly filed by UIDH, FIDH, RADDHO, ONDH and AMDE All these NGOs are acting in this case on behalf of certain West African nationals expelled from Angola in 1996. According to the complainants, between April and September 1996, the Angolan government rounded up and expelled West African nationals on its territory. These illegal expulsions were preceded by acts of brutality committed against Senegalese, Malian, Gambian, Mauritanian and other nationals. Those affected lost in the process their belongings.

2. The complainants maintain that. the Angolan State violated the provisions of articles 2, 7

paragraph 1 a, 12 paragraphs 4 and 5 of the African Charter on Human and Peoples' Rights.

PROCEDURE

3. The communication is not dated, but it was received during the 20th session of the Commission, held in Grand Bay, Mauritius in October, 1996.
4. On 24 October 1996 the Secretariat acknowledged receipt of the communication.
5. On 19 December 1996 the Secretariat notified the Angolan government of the communication.
6. During its 21st Session in Nouakchott (Mauritania) in April 1997, the Commission declared the communication admissible.
7. The government and the complainants were informed of this decision on 23 June 1997.
8. At the 22nd Session in November 1997, the Commission ruled on the merits of the case.

THE LAW

ADMISSIBILITY

9. The Commission considered the issue of admissibility of this communication on the basis of information furnished by the complainants. It deplores the fact that the defendant State did not respond to the notification sent to it on 19 December 1996, following the decision of the seizure of the Commission.
10. Article 57 of the Charter implicitly indicates that the State Party to the said Charter against which allegation of human rights violations are levelled is required to consider them in good faith and to furnish the Commission with all information at its disposal to enable the latter to come to an equitable decision. In this case, in view of the defendant State's refusal to cooperate with the Commission, the latter can only give more weight to the accusations made by the complainants and this on the basis of the evidence furnished by them.
11. The evidence shows that between April and September 1996, the government of the Republic of Angola embarked on mass expulsion of aliens from its territory, and that these expulsions were illegal and arbitrary, and in violation of article 12, paragraphs 4 and 5 of the African Charter on Human and Peoples' Rights.
12. According to information at the disposal of the Commission, it appears that those expelled did not have the possibility to challenge their expulsion in court. In communication No: 71/92 "Rencontre Africaine pour la Defense des Droits de l'Homme vs. Zambia "(20th Session, October 1996), the Commission was of the view that "the massive nature of the arrests, the fact that the victims were kept in detention before the expulsions and the pace with which they were carded out did not leave and opportunity to the complainants to establish the illegality of these acts before the Courts." In view of the foregoing, the Commission notes that local remedies were not accessible to the complainants.
13. On these grounds, the Commission declared the communication admissible.

THE MERITS

14. Article 12 paragraph 4 stipulates 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. Paragraph 5 of the same article stipulates that "the mass expulsion of non nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

15. In communication 71/92 cited here above, the Commission indicated that "mass expulsion was a special threat to human rights. 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.

16. The Commission concedes 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 a special violation of human rights"⁴.

17. This type of deportations calls into question a whole series of rights recognised and guaranteed in the Charter; such as the right to property (article 14), the right to work (article 15), the right to education (article 17 paragraph 1) and results in the violation by the State of its obligations under article 18 paragraph 1 which stipulates that "the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health". By deporting the victims, thus separating some of them from their families, the Defendant State has violated and violates the letter of this text.

18. Article 2 of the Charter emphatically stipulates that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." This text obligates States Parties to ensure that persons living on their territory, are they their nationals or non-nationals enjoy the rights guaranteed in the Charter. In this case, the victim's rights to equality before the law were trampled on because of their origin.

19. It emerges from the case file that the victims did not have 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 by the Angolan government. Consequently, Article 7, paragraph 1 (a) of the Charter [has been violated].

20. The Commission does not wish to call into question nor is it calling into question the right of any State to take legal action against illegal immigrants and deport them to their countries of origin, if the competent courts so decide. It is however of the view that it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the Charter and international law.

ON THESE GROUNDS, THE COMMISSION

1. Declares that the deportation of the victims constitute a violation of articles 2, 7 paragraph 1(a), 12 paragraphs 4 and 5 as well as articles 14 and 18 of the African Charter on Human and Peoples' Rights.

2. With regards to damages for prejudice suffered, it urges the Angolan government and the complainants to draw all the legal consequences arising from the present decision.

Taken at the 22nd Ordinary Session, Banjul (Gambia), on 11 November 1997.