

CASE DIGEST

Decisions of the African Commission on Human and Peoples' Rights, 2010-2014

SEPTEMBER 2015

A summary of select decisions released by the African Commission on Human and Peoples' Rights from its 29th, 32nd, 33rd, 34th, 35th and 36th Activity Reports. These reports cover selected decisions taken at the Commission's 9th to 15th Extraordinary Sessions (March 2011 to March 2014) and at its 48th to 55th Ordinary Sessions (November 2010 to May 2014). Prepared with the assistance of the Human Rights Implementation Centre at Bristol Law School.

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Decisions on Admissibility

Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria

November 2010, ACHPR, 338/07, 48th Ordinary Session

Inadmissible under article 56(5): failure to exhaust local remedies

The complainant brought the complaint against the Federal Republic of Nigeria on behalf of the people of the Awori Community (the victims), alleging that the respondent state violated the rights of the victims by failing to address the consequences of a pipeline explosion which resulted in the loss of numerous lives, permanent injuries, and environmental degradation. The complainant also claimed that the state had failed to address the problem of fuel scarcity in the aftermath of the explosion, repair damaged pipelines, and provide adequate treatment to the injured.

The complainant alleged breaches of articles 2 (right to freedom from discrimination), 4 (right to life), 5 (prohibition of torture), 14 (right to property), 16 (right to health), 20 (right to self-determination) and 24 (right to a general satisfactory environment) of the African Charter.

The commission found that the requirements of article 56(5) were not satisfied. The complainant argued that domestic remedies were unavailable, ineffective, and insufficient due to the scale of the human rights violations, the number of victims, and the inaccessibility of the Nigerian legal system to the poor and marginalized. However, the commission found no evidence in support of this argument and held that the complainant made 'generalized statements about the unavailability of legal remedies in the respondent state without attempting to exhaust them'. The communication was declared inadmissible.

Link to [full decision \(PDF\)](#)

ARTICLE 19 and Others v. Zimbabwe

November 2010, ACHPR, 305/05, 48th Ordinary Session

Inadmissible under article 56(6): failure to submit within reasonable time period

The complainant brought a complaint against the Republic of Zimbabwe, alleging that Capital Radio Private Limited (CRPL) was unable to broadcast in Zimbabwe due to legal restrictions and political opposition. In October 2000, police raided CRPL's broadcasting studio and seized its equipment, thereby ending CRPL's broadcasting. In June 2001, CRPL instigated legal proceedings in the Supreme Court, challenging the constitutionality of the newly instituted Broadcasting Services Act (BSA) of April 2001 on the grounds of inconsistency with the provisions of the constitution guaranteeing freedom of expression. Two years later, in 2003, the Supreme Court upheld the bulk of the BSA, ruling that only 4 of the 17 contested provisions were unconstitutional. As of 2005, no broadcasting licenses had been granted in Zimbabwe.

The complainants alleged that the BSA violated articles 1 (obligations of member states), 2 (right to freedom from discrimination), and 9 (right to receive information and freedom of expression) of the African Charter.

The commission found that the communication was not filed within a reasonable time after the exhaustion of local remedies, as required by article 56(6) of the charter. The complainants submitted the communication in August 2005, just under 2 years after the Supreme Court delivered its final ruling. The complainants argued that it was reasonable to wait and see how the Supreme Court judgment would be implemented and whether any broadcasting licenses would be issued. The commission rejected this reasoning stating that the CRPL itself had not applied for a license, and that the matter before the commission did not turn on the refusal to grant licenses, but rather the incompatibility of provisions of the BSA with the African Charter. The commission held that the complainants knew as far back as September 2003 that they had reached 'a dead end' at the domestic level and waiting for two years without a compelling reason is unjustifiable.

Link to [full decision](#) (PDF)

Samuel T. Muzerengwa & 110 Others v. Zimbabwe

March 2011, ACHPR, 306/05, 9th Extra-ordinary Session

Inadmissible under article 56(5) and (6): failure to exhaust local remedies and failure to submit communication within a reasonable period

The complainant brought the complaint against the Republic of Zimbabwe on behalf of Samuel T. Muzerengwa and 110 families (the victims), alleging that the Buhera Rural District Council evicted the victims from their village in a manner that was inhumane, unfair, and disproportionate. The complainant alleged that the evictions did not meet international standards for forced evictions as the executive and the courts failed to provide an effective remedy.

The complainant therefore alleged the breach of articles 1, 2, 3, 5, 10(1), 13(1) and (3), 14, 16, 17, 18(1) and (4), 21 and 22 of the African Charter by the respondent state.

The commission found that the complainant had not given the domestic courts the opportunity to remedy the merits or substance of the complaint. The commission ruled this, in spite of the fact that the High Court and Supreme Court had dismissed the case because the petitioners had approached the local courts to rule on procedural matters rather than the merits. The commission ruled the communication inadmissible under articles 56(5) and (6) of the African Charter.

Link to [full decision](#) (PDF)

J.E. Zitha & P.J.L. Zitha (represented by Prof. Dr. Liesbeth Zegveld) v. Mozambique

1 April 2011, ACHPR, 361/08, 9th Extra-ordinary Session

Inadmissible under article 56 (5) and (6): failure to exhaust domestic remedies and failure to submit complaint within reasonable time period

The complainant brought the complaint against the Republic of Mozambique on behalf of Mr. Jose Eugency Zitha (first victim) and the first victim's son Prof. Pacelli L.J. Zitha (second victim). The complainant alleged that the first victim was arrested on orders of the Minister of Home Affairs and subsequently disappeared by the Mozambican government. It was alleged that Mozambique had violated the first victim's rights under article 2 (right to freedom from discrimination), 4 (right to life), 5 (prohibition of torture), 6 (right to personal liberty) and 7(1) (right to a fair trial) of the African Charter. A violation of the second victim's article 5 right to be free from torture and cruel, inhuman and degrading treatment was also alleged.

The commission considered that even though the acts complained of occurred before Mozambique ratified the African Charter, a failure to investigate an enforced disappearance constituted a continuing violation of the charter and that the commission was therefore competent to examine the matter.

However, the commission found that the complainant and victims failed to satisfy the requirement to exhaust local remedies. The commission considered that the measures taken by the second victim, such as letters to the current and former Presidents of Mozambique, the UN Special Rapporteur of Extrajudicial, Summary and Arbitrary Executions, and Amnesty International, did not satisfy the requirement to exhaust domestic remedies because judicial remedies were not sought. The commission further considered the complainant's argument that domestic remedies could not be exhausted because local lawyers refused to represent the victims for fear of being associated with the case, was not substantiated. For these reasons the commission found that article 56 (5) had not been complied with.

The commission also declared that article 56(6), which requires that a complaint is filed within a reasonable time from the exhaustion of domestic remedies, had not been fulfilled. The commission found that the 13 year lapse from when the second victim was able to first travel back to Mozambique, to the year of filing was an unreasonable delay.

Link to [full decision](#) (PDF)

Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Centre for the Protection of Human Rights) v. Kenya

5 November 2011, ACHPR, 375/09, 50th Ordinary Session

Inadmissible under article 56(6): failure to submit claim within a reasonable period

The complainants brought the complaint against Kenya on behalf of Priscilla Njeri Echaria (the victim), alleging the Kenyan Court of Appeal (KCOA) denied the victim an equal share of the property acquired during marriage. In February 2007, the KCOA reversed the High Court's decision to grant the victim one half of all property acquired during marriage,

reducing the victim's share of matrimonial property to a quarter of the assets. As a result, the complainants alleged breaches of articles 1 (obligations of member states), 2 (right to freedom from discrimination), 14 (right to property), 18(3) (protection of family and vulnerable groups), and 19 (right of all peoples to equality and rights) of the African Charter.

The commission found that the communication was not submitted within a reasonable time from the exhaustion of local remedies as required by article 56(6). It held that the complainants did not make submissions to explain why the communication was not submitted earlier than 31 months after all local remedies were exhausted. The commission found this unexplained interval to be unreasonable and declared the communication inadmissible.

[Link to full decision](#) (PDF)

Interights (on behalf of Gizaw Kebede and Kebede Tadesse) v. Ethiopia

16 December 2011, ACHPR, 372GTK/2009, 10th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The complaint was brought on behalf of Gizaw Kebede (first applicant) and Tadesse Kebede (second applicant). The applicants were issued with licenses for the production of river washed sand which were later effectively revoked by a directive of the Federal Ministry of Mines and Energy.

The applicants petitioned the District Court, which found in favour of the applicants on the grounds that the respondent state's directive was meant to regulate a different kind of mine, rather than the kind run by the applicants. In 2005, the District Court ordered the applicants' licenses be reinstated. The respondent state failed to comply with the District Court's judgment and the applicants re-applied to the court in March 2007, requesting reinstatement of their licences. This time their application was refused on the grounds that the judgment should have been executed within a year of its pronouncement (despite a provision of the Ethiopian Civil Procedure Code that provides a 10 year limit for the execution of judgment). The applicants made further appeals to the High Court which ordered the District Court to execute its initial 2005 judgement. The District Court declined to comply.

The complainant alleged a violation of articles 1 (obligation of member states), 7 (right to a fair trial), 14 (right to property), and 26 (duty to guarantee the independence of the courts) of the African Charter.

The commission found that the requirements of article 56(5) had not been satisfied because the applicants had not attempted to exhaust all available domestic remedies. The next step in the domestic court process would have been to appeal to the Regional Supreme Court. The commission found that the complainant's argument, that past cases prove that the Regional Supreme Court only considers cases where there was an error of law, was not sufficient to excuse the failure to attempt to exhaust domestic remedies. The commission cited the Constitution of Ethiopia, which states that decisions of the Regional High Court are appealable to the Regional Supreme Court and reasoned that it is not sufficient to "cast mere aspersions on the ability of the Regional Supreme Court, its Cassation Bench, and the

Cassation Bench of the Federal Supreme Court due to past incidences,” including past cases.

[Link to full decision](#) (PDF)

Givemore Chari (represented by Gabriel Shumba) v. Zimbabwe

February 2012, ACHPR, 351/07, 11th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The complainant represented Givemore Chari (the victim), a citizen of Zimbabwe who alleged that he was suspended from university after leading a peaceful protest of students in October 2005. After leading a peaceful march against tuition increases in May 2006, police arrested and assaulted him. He claimed that after his release, the government Central Intelligence Organization abducted, assaulted, and planned to kill him. In his escape from his captors, the victim sustained severe body injuries. As a result, the complainant claimed violations of the victim’s rights under articles 4 (right to life), 5 (prohibition on torture), 6 (right to personal liberty), 7(b) (right to be presumed innocent until proven guilty), and 14 (right to property) of the African Charter.

The commission declared the communication inadmissible for failing to exhaust domestic remedies as required under articles 56(5) and 56(6) of the African Charter. The complainant argued that because he was forced to flee the country in fear of his life, exhausting domestic remedies was impossible as returning would be impractical. The complainant also claimed that domestic remedies were not available and effective because there was no prospect of success.

The African Commission found that the communication was vague because corroborating evidence, including medical reports, were not produced. Therefore the evidence available was insufficient to substantiate the victim’s allegations of torture and fear to remain in Zimbabwe. In addition, the African Commission found that, the victim need not be physically in the country in order to exhaust local remedies: the complainant, representing the victim, could have done this on his behalf. Furthermore, though the victim claimed that there was no prospect of success with local remedies, the commission stated that it can only conclude a local remedy is ineffective if there is proof beyond a reasonable doubt that the remedy would not “redress the violation(s) alleged.” The commission ruled that the complainant did not make attempts to test the available remedies in the respondent state, as is required. The communication was declared inadmissible under article 56(5) of the African Charter (and also under the related article 56(6)).

[Link to full decision](#) (PDF)

Promoting Justice for Women and Children (PROJUST) v. Democratic Republic of the Congo

February 2012, ACHPR, 278/03, 11th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The complainant brought this action on behalf of six women (the victims) who were Congolese citizens. The victims were arrested in lieu of their husbands who were believed to have participated in the assassination of the late President Kabila, and who had since fled the

country or were deceased. After their arrest, the victims were tortured and transferred with their children to a penitentiary, where they were held for a year without being permitted to communicate with counsel. Subsequently, they were brought before a military court where they were acquitted of all charges. The victims claimed violations of articles 5 (prohibition of torture), 7 (right to a fair trial), and 14 (right to property) of the African Charter, as well as violations of the UDHR and ICCPR.

After numerous reminders to the complainant to submit documents on the communication's admissibility, including an answer to the question of exhaustion of local remedies, and several deferrals of the decision in anticipation of these submissions, the African Commission decided to make a pronouncement on the basis of the documents at its disposal. The commission determined that the victims had not provided evidence of having resorted to the local courts to have the perpetrators of the acts of torture convicted, and to have their property restored to them. Therefore, the commission found that the complainant had not exhausted local remedies in relation to the allegations, thus the communication was inadmissible.

Link to [full decision](#) (PDF)

Nixon Nyikadzino (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe

February 2012, ACHPR, 340/07, 11th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The complainant represents Mr. Nixon Nyikadzino (the victim), a Zimbabwean citizen who alleged to have been kidnapped, interrogated, tortured, and threatened by military officers on account of his involvement with the work of the National Constitutional Assembly (NCA), a non-governmental organization.

The complainant alleged breaches of articles 1 (obligations of member states), 2 (right to freedom from discrimination), 4 (right to life), 5 (prohibition of torture), 6 (right to personal liberty), and 10 (right to freedom of association) of the African Charter. The victim claimed that exhausting local remedies was impossible because he had to flee the country. The victim claimed that even if he could seek local remedies, there was no prospect of success because of the judiciary's lack of independence and because the state does not comply with judicial orders involving politically sensitive cases.

The commission rejected the argument that the victim was prevented from pursuing domestic remedies because he was in exile, stating that this could have been done by the complainant or someone else on the victim's behalf. The commission also held that it could not find that local remedies were ineffective on the basis of the evidence presented and the complainant could and should have attempted to pursue them instead of casting doubts on the basis of "isolated or past incidences." Accordingly, the commission ruled the communication inadmissible under article 56(5).

Link to [full decision](#) (PDF)

Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan

February 2013, ACHPR, 386/2010, 13th Extra-ordinary Session

Inadmissible under article 56(6): submission within a reasonable time period

The applicant was an Associate Professor at the University of Khartoum. He claimed to have been detained by members of the National Intelligence Security Service for several weeks and interrogated about the courses he was teaching and the political activities of other faculty members. During this interrogation he claimed to have been repeatedly beaten, bathed in ice water, threatened with rape, and deprived of sleep for three days. The applicant complained that articles 1 (obligations of member states), 5 (prohibition on torture), 6 (right to personal liberty), 7 (right to a fair trial), 8 (right to freedom of conscience), and 9 (right to freedom of expression) of the African Charter had been violated during his interrogation and detention.

The commission found that the claim was based on sufficient evidence and that local remedies had been constructively exhausted. The commission explained that the importance of exhausting local remedies lies in giving notice to the respondent of the issue and offering an opportunity to respond. As such, in addition to analyzing whether the applicant had exhausted local remedies, the commission also considered whether the respondent was sufficiently aware of the applicant's allegations and had taken steps to investigate them. The commission reviewed the meaning of available, adequate, and effective remedies. They found that the applicant constructively exhausted local remedies because the political situation in Sudan prevented the courts from providing an adequate and effective remedy. The commission also held that fear of persecution is an exception to the requirement to exhaust local remedies (in contrast with *Givermore Chari v. Zimbabwe*, where the commission did not accept the applicant's argument that he was unable to exhaust local remedies because he feared for his life if he returned to Zimbabwe, for evidentiary reasons, but also because the commission considered that the applicant need not be physically present in the relevant country in order to access the local courts and exhaust local remedies).

The commission declared the communication inadmissible under article 56(5), finding that the 15 month period between the exhaustion of local remedies and the submission of the communication to the commission cannot be considered a reasonable length of time in light of the reasons given by the complainant.

[Link to full decision](#) (PDF)

Law Society of Zimbabwe et al v. Zimbabwe

February 2013, ACHPR, 321/06, 13th Extra-ordinary Session

Commission has jurisdiction to hear cases brought by NGOs (actio popularis), and no requirement to exhaust domestic remedies as jurisdiction of courts was ousted

The applicants are members of the legal profession in Zimbabwe who contested a constitutional amendment that ousts the jurisdiction of the Courts of Zimbabwe to entertain challenges against executive decisions regarding compulsory acquisition of property by the state. They argued that the amendment gives the government unchecked power and is a violation of the principles of transparency and accountability, in violation of articles 1 (obligations of member states), 3 (right to equal protection), 7 (right to a fair trial), and 25

(duty to promote human rights) of the African Charter.

Although the government challenged the competence of the commission to hear this case, the commission considered that the violations alleged did raise material elements which may constitute human rights violations under the African Charter. It also reaffirmed that the commission has adopted an *actio popularis* approach to standing, where applicants other than direct victims (and including NGOs) can bring complaints to the commission without needing to show that their specific rights were violated.

The government claimed that the application was inadmissible under article 56(2), as it was incompatible with the Constitutive Act of the AU. But the commission rejected this claim, as the application was against a state party to the African Charter, alleged *prima facie* violations protected by the charter, related to events after ratification of the charter, and was sufficiently specific. There was also no requirement to exhaust domestic remedies in this case as the jurisdiction of the courts had been ousted in relation to the expropriation of land.

The application was subsequently struck out for lack of diligent prosecution because the applicant failed to provide submissions on merits (see below).

[Link to full decision](#) (PDF)

Kamanakao Association, Reteng & Minority Rights Group v. Botswana

July 2013, ACHPR, 331/06, 14th Extra-ordinary Session

Application for reconsideration denied; failure to present new evidence under rule 107(4)

This communication was initially ruled inadmissible at the 10th Extraordinary Session on the grounds of non-exhaustion of local remedies and the timeliness of submission following the exhaustion of local remedies (decision not published, and listed in the activity report as decided at the 11th Extraordinary Session), and was submitted for reconsideration to the 14th Extra-Ordinary Session.

The complainants requested reconsideration on the basis that the requirement to exhaust domestic remedies had actually been met in the case, arguing that they did not appeal the previous decision of the High Court of Botswana to the Court of Appeal because the appeal was bound to fail. The request presented new evidence that the Court of Appeals would not have ruled on the constitutionality of provisions of the Botswana Constitution (which was the basis of the complainant's case), namely a recent decision in *Kgosikgolo Kgafela II Kgafela and Dithshwanelo v. Attorney General of Botswana and Others*, wherein the Court of Appeals held that it did not have the powers to alter or "rewrite" the constitution.

The African Commission stated that under rule 107(4) of the rules of procedure, the Kgosikgolo holding was not considered new evidence. To qualify as new evidence, the evidence should have existed at the time the commission made its decision on admissibility. This evidence had been unknown to the complainants at the time. The Kgosikgolo holding did not exist at the time the communication was initially deemed inadmissible, and therefore was not new evidence. As such the application for reconsideration of this communication was dismissed.

[Link to full decision](#) (PDF)

David Mendes (represented by Centre for Human Rights) v Angola

February 2013, ACHPR, 413/12, 13th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The victim is a human rights lawyer and president of Partido Popular, an opposition party in Angola. The victim alleged that, following his support for a demonstration, announcement of candidature for the presidency, and allegations against President Eduardo dos Santos of embezzlement and corruption, he received death threats and other attacks on his life and property, perpetrated by the state or with its acquiescence. The victim further claimed that these actions have resulted in the exclusion of himself and the Partido Popular from participating in elections. As a result, the complainant alleged violations by the respondent state of the victim's rights under articles 1 (obligations of member states), 4 (right to life), 6 (right to personal liberty), 9 (right to freedom of expression), 10 (right to freedom of association), 11 (right to freedom of assembly), 12 (right to freedom of movement), 13 (right to participate in government), and 21(2) (right to free disposal of wealth and natural resources) of the African Charter.

The complainant claimed that the requirement to exhaust local remedies had been satisfied since the state failed to investigate the complaints of harassment and threats against the victim as well as his accusations of corruption and embezzlement by the president. Further, the complainant cited a climate of fear prevalent in the country which rendered local remedies ineffective.

The commission noted the lack of evidence to support the victim's claim that he had reported the violations to the authorities of the state – he did not provide specifics of the complaint, the state claimed that such complaints would have been registered and given a number, and the applicant did not dispute this. Without such proof, the state cannot be shown to have been in a position to remedy the alleged violations, and the claim that local remedies were exhausted cannot be substantiated. Further, the applicant was a prominent lawyer in Angola, and during the same period he had instituted proceedings before the Constitutional Court, which contradicted his assertion that local remedies were ineffective. The failure of those proceedings does not demonstrate that local remedies are ineffective, and applicants must do more than merely cast aspersions on their effectiveness. Thus, the communication was declared inadmissible under article 56(5) of the African Charter.

Link to [full decision](#) (PDF)

Mohammed Abdullah Saleh Al-Asad v. The Republic of Djibouti

May 2014, ACHPR, 383/10, 55th Ordinary Session

*Inadmissible under article 56(2): incompatible *ratione loci**

Mohammed Abdullah Saleh Al-Asad, a citizen of Yemen who lived and worked in Tanzania, brought the complaint against the Republic of Djibouti. He claimed that he was apprehended by who he believed to be two Tanzanian men, and flown to an undisclosed destination, which he believes was in the territory of the Republic of Djibouti. The men did not inform the complainant of the reasons for his apprehension or his whereabouts and detained him in

isolation for two weeks. During the detention, the complainant alleged that he was interrogated concerning terrorist-related activities, and was subjected to various forms of torture and ill-treatment. He was then put onto a plane and flown to three detention facilities allegedly operated by the USA, two of which were in Afghanistan.

The complainant alleged the breach of articles 1 (obligations of member states), 2 (right to freedom from discrimination), 3 (right to equality before the law), 4 (right to life), 5 (prohibition of torture), 6 (right to personal liberty), 7(1) (right to a fair trial), 12(4) (right to freedom of movement), 14 (right to property), and 18 (protection of the family and vulnerable groups) of the African Charter.

The respondent state challenged the admissibility of the communication under article 56(2) of the charter on the ground that the alleged violations were directed against the USA, a state not party to the African Charter; that the complainant's evidence did not establish that he was ever in Djibouti in the first place; and even if the complainant was present and ill-treated in Djibouti, the latter couldn't be responsible for the actions of a third state.

The commission rejected the respondent state's argument that the commission is unable to adjudicate the communication since it involves determining the propriety of the actions of a state not party to the charter. The commission held that given that the alleged violation relates to the jus cogens prohibition of torture, the fact that the receiving state (that would execute the torture) was not party to the charter does not absolve a sending state from its obligations under the charter relating to the act of sending the victim to the third state.

The commission declared the communication inadmissible for incompatibility *ratione loci* with the requirements of article 56(2) of the charter because the complainant failed to conclusively establish that he was in the territory of the respondent state. Therefore the commission found there was not a sufficient connection between the alleged violation and the respondent state.

Link to [full decision](#) (PDF)

Decisions on the Merits

Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt

1 March 2011, ACHPR, 334/06, 9th Extra-ordinary Session

Violation of article 5 (torture and cruel, inhumane and degrading treatment and punishment), article 7 (right to a fair trial), and article 26 (duty to guarantee independence of courts) but no violation of article 4 (right to life)

The complainants brought the complaint on behalf of Mohamed Gayez Sabbah, Mohamed Abdalla Abu-Gareer and Ossama Mohamed Al-Nakhlawy (the victims), alleging that they were detained, tried, and sentenced to death after being accused of the 2004 and 2005 bombings in Sharm El-Sheikh and the ‘Taba bombings.’

The complainants alleged that during the victims’ detention, State Security Intelligence agents subjected them to various forms of torture and ill-treatment to elicit confessions. The agents held them incommunicado for a long period of time, without access to a lawyer and denied them necessary medical attention. The complainants alleged that the victims were tried by the Supreme State Security Emergency Court in a trial characterized by procedural and substantive anomalies. They further alleged that the court’s decision was based substantially on the ‘confessions’ obtained through torture and prolonged ill-treatment. The complainants claimed violations of articles 4 (right to life), 9 (right to receive information and free expression), 5 (prohibition of torture), 7(1) (a), (c) (right to a fair trial), and 26 (duty to guarantee independence of courts) of the African Charter.

Given that the victims provided evidence of marks on their bodies indicating torture, and that the state made no attempt to give any satisfactory explanation of how the injuries were sustained, the commission concluded that the marks could only have been inflicted by the respondent state. The commission found overall that the action of the respondent state constituted multiple violations of article 5 of the African Charter, which covers not only torture, but also cruel, inhuman or degrading treatment.

The commission found the Supreme State Security Emergency court’s independence was compromised due to the executive influence over its proceedings, violating article 7 of the African Charter. The respondent state violated Article 7(1)(a) by denying the victims the right to appeal the decision of the Supreme State Security Emergency Court. The commission found a violation of article 7(1)(c) noting that the victims had been denied access or had not been granted timely access to a lawyer. It held that the degree of control which the president exercised over the composition, conduct, and outcome of proceedings of the State Security Court did not guarantee an independent and impartial judicial process within the meaning of article 7(1)(d) of the charter. The commission further found that article 26 had been violated due to the court’s lack of impartiality.

The commission found that although the implementation of the death sentence after an

unfair trial violates article 4, it held that the latter provision has not been violated here, as the victims had not been executed but were still in the custody of the respondent state.

Link to [full decision](#) (PDF)

Spilg and Mack & DITSHWANELO v. Botswana

December 2011, ACHPR, 277/03, 10th Extra-ordinary Session

Violation of article 5 (torture and cruel, inhuman, and degrading treatment) but no violation of articles 2 (non-discrimination), 3 (equality before law), 4 (right to life), and 7 (fair trial)

The complainants brought this communication on behalf of Lehlohonolo Bernard Kobedi (“Kobedi”), who had been sentenced to death for the murder of a sergeant of the Botswana police force. Kobedi was placed on death row for ten years before being put to death. The complainant alleged violations of articles 2 (right to freedom from discrimination), 3 (right to equal protection), 4 (right to life), 5 (prohibition of torture), and 7 (right to a fair trial) of the African Charter by the Government of Botswana.

The commission first considered article 2 (discrimination) and article 3 (equality before the law). The complainants argued that mandatory imposition of the death penalty in murder cases with only rare exceptions for extenuating circumstances limits the factors that are taken into consideration in regards to sentencing. The state responded that blanket imposition of the death penalty in all murder cases could not violate either article because there was no discrimination—Kobedi had not been treated differently from anyone in his same situation. The commission accepted this argument, finding no violation of articles 2 and 3 because the complainant had neither shown that Kobedi had been discriminated against based on his race, ethnic group, sex, or other such factors nor had he been accorded differential treatment from those in like circumstances.

The commission then addressed article 5, which protects against torture and cruel, inhuman, and degrading treatment. The complainants alleged that execution by hanging could be construed as torture if the state did not pay attention to the weight of the condemned (which has an impact on the degree of pain and rate at which the individual dies). In addition, the victim and his family members were never given the opportunity to have last farewells. The commission rejected the first part of this argument, finding a lack of evidence showing that the state had carried out the hanging without due attention to Kobedi’s weight. However, the commission did find that the lack of opportunity for last farewells and the failure of the state to provide notice of his execution to the victim’s family was a violation of article 5.

Finally, the commission considered article 4 (right to life) and article 7 (fair trial). The commission found no violation of article 7 because (1) Kobedi had received the right to counsel of his choice; (2) that right had not been undermined; and (3) his defense had been adequately conducted. The commission determined that as a result, Kobedi had been afforded due process throughout his trial, so no violation of article 4 had occurred. The death penalty was not disproportionate here because of the seriousness of his crime, of which he had been found guilty after a fair trial.

Thus, the commission held that there was a violation only of article 5, in respect of the failure to give adequate (or any) notice of the timing of the execution. However, it also urged the state to put a moratorium on the use of the death penalty with a view towards its abolition.

[Link to full decision](#) (PDF)

Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt

December 2011, ACHPR, 323/06, 10th Extra-ordinary Session

Violations of articles 1 (respect for rights), 2 (non-discrimination), 3 (equality before law), 5 (cruel treatment), 9(2) (free expression), 16(1) (right to health), 18(3) (discrimination against women), and 26 (independence of courts); No violation of article 7(1)(a) (right to appeal) and 16(2) (obligation to provide medical attention)

The complainant represented four victims (all women) involved in a protest led by the Egyptian Movement for Change. During the protest, riot police surrounded the protestors and did nothing while members of the National Democratic Party (supporters of then President Mubarak), sometimes at the instruction of State Security Intelligence (“SSI”) officers, beat, insulted, intimidated, as well as sexually harassed and violated the victims. Upon filing complaints with the domestic authorities, the victims had also been threatened by SSI officers and other unidentified men, in an attempt to get the women to withdraw their statements. The complainant alleged that the actions constituted violations of the African Charter.

The commission first ruled that the state violated the prohibition of discrimination and its obligation to eliminate discrimination against women (articles 2 and 18(3)) because the acts committed against the victims were acts of gender-based violence perpetrated by state actors (and non-state actors under the control of state actors) that went unpunished, finding that the violations were “designed to silence women who were participating in the demonstration and deter their activism in the political affairs of the state.” This was found to also be a violation of article 3, which guarantees individuals equal protection of the law, because the complainants provided sufficient evidence of unequal treatment on the basis of gender.

Next, the commission found that because the treatment against the victims was inhuman and degrading, and investigations into the treatment were not conducted, the actions (and omissions) by the state constituted a violation of article 5.

The commission then considered articles 7(1)(a) and 26, both of which relate to the right to a fair trial. Despite finding that the investigative process in this case had not been impartial, the commission found no article 7(1)(a) violation because the complainants had the opportunity to appeal their claims. It did, however, find an article 26 violation because the state had provided insufficient information about mechanisms put into place after the incidents to provide protection and redress to the victims.

Finally, the commission found that the actions on the part of the state also amounted to violations of the freedom of expression protected under article 9 and the right to health protected by article 16(1). The commission did not, however, find a violation of article 16(2) because the victims all received medical attention after they were assaulted. Taken together, the violations of so many provisions of the African Charter amounted to a violation of article 1, since there was sufficient evidence that the state had failed to perform its positive duty to prevent and investigate such violations. The state was ordered to pay each of the victims EP 57,000 and was urged to investigate the violations and bring the perpetrators to justice.

[Link to full decision](#) (PDF)

Gabriel Shumba v. Zimbabwe

April 2012, ACHPR, 288/04, 51st Ordinary Session

Violation of article 5 (torture and ill-treatment); no violation of articles 4 (right to life), 6 (right to liberty), 7(1)(c) and (d) (right to counsel and prompt trial), 10(1) (free association), and 14 (right to property)

Personnel from the Central Intelligence Organization arrested the complainant, a citizen of the Republic of Zimbabwe and a human rights lawyer, as well as confiscated his belongings, and beat him. He was then detained without charge or access to counsel and denied food and water. The day after his arrest, he was driven to an unknown location, where he was tortured until the third day of his arrest when his lawyers were able to reach him. He was charged with organizing, planning, and conspiring to overthrow the government. He subsequently fled to South Africa for fear of his life. His complaint alleged that articles 4 (right to life), 5 (prohibition of torture), 6 (right to personal liberty), 7 (c) and (d) (right to a fair trial), 10(1) (right to freedom of association), and 14 (right to property) of the African Charter on Human and Peoples' Rights had been violated.

With regards to article 4, the commission found that the state had not violated the complainant's right to life because of a failure on the part of the complainant to provide concrete evidence of such a violation. The commission also rejected the complainant's claims under article 6, stating that the state did not violate his right to personal liberty and protection from arbitrary arrest because the complainant only spent two days in custody before being granted bail. For similar reasons, the commission denied the article 7 claims, which were premised on the allegation that the state had violated the victim's right to have his cause heard: the commission stated that the complainant did not provide cogent evidence as to how the state caused these violations, as he obtained legal representation after only two days of detention, and the complainant's trial was heard within a short period of time and was not unduly delayed.

The commission further found that the state did not violate the victim's right to free association under article 10 since the state, as a legitimate government, had the right to effect an arrest if there was "reasonable suspicion that a crime is being planned or being committed." As long as the state follows due process and the authorities did not undermine fundamental rights guaranteed by the constitution; no such rights of the victim had been interfered with by the state and therefore, there was no article 10 violation. Finally, the commission found no violation of complainant's right to property under article 14 because (1) the items seized were used by the police in the investigation, and (2) the temporary seizure of a mobile phone or documents were not the property rights sought to be protected under article 14.

However, the commission did find that the state was in violation of the victim's rights under article 5 to not be tortured and ill-treated. The victim provided evidence (including medical and psychological reports) to support his claims that he had been beaten and subjected to prolonged electrocution, and the state had taken no steps to investigate or address these detailed allegations. As such, the commission recommended that the state pay compensation to the victim for this trauma and carry out an inquiry to bring the officials who perpetrated the crime to justice.

Link to [full decision](#) (IHRDA Case Law Analyser)

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe

April 2012, ACHPR, 295/04, 51st Ordinary Session

Violation of articles 1 and 4 (right to life)

On January 10, 2001, police shot and killed Noah Kazingachire's son. He claimed they did not identify themselves as police officers when they pulled up next to his car; he thought they were carjackers and drove off in an attempt to escape. They pursued and shot at the car, striking and killing Noah's son. They assert they identified themselves as police, Noah fled, and they shot at him to get him to stop.

On March 14, 2001, police arrested and shot Munyaradzi Never Chitsenga who was resisting arrest and fleeing from police.

On November 25, 2001, Lameck Chemvura was on a train that was also carrying some army officers. The officers asked the other passengers for identification. Upon discovering that Lameck was a student at the University of Zimbabwe and a member of the opposition political party, they beat him to death and dumped his body off the moving train.

Batanai Hadzisi was a student at the University of Zimbabwe, where there were disturbances and protests on April 8 and 9, 2001. The police were called in to reestablish order. They pursued Batanai into a dorm room and beat him to death.

The African Commission found that Zimbabwe violated articles 1 and 4 (right to life) of the African Charter. While the right to life is not absolute, law enforcement officers are only permitted to kill in self-defense or in the defense of others against the imminent threat of death or serious injury. Use of deadly force must be a last resort. In all four deaths in question, the decedent posed no serious risk to anyone. In none of the cases were the officers acting in self-defense. Therefore, use of deadly force was not justified and the killings violated the victims' right to life.

The commission held that Lameck Chemvura's death was not directly attributable to the state because the army officers were not acting on official orders but rather were acting in their personal capacities. However, an act that violates human right laws, even if it is not directly imputable to a state, can lead to international responsibility of the state if the state fails to exercise due diligence in preventing or responding to the violation. Since Zimbabwe failed to exercise due diligence by failing to provide an adequate wrongful death remedy, the army officers' violations are imputed to the state. The other homicides were directly attributable to the state. There is a violation of article 1 whenever any other article is violated.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide that victims have a right to reparation for harm suffered as a result of a gross violation of human rights law. Adequate reparation includes damages for emotional harms as well as physical harms; thus, a suit for bereavement damages must be available to the families of people who are wrongfully killed by the state.

There is no tort action under current Zimbabwean law to recover bereavement damages for a wrongful death; a cause of action only exists for loss of support or actual damages (medical,

hospital, and funeral costs). The commission thus recommended that Zimbabwe establish a wrongful death suit to provide bereavement damages.

[Link to full decision \(PDF\)](#)

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia

October 2011, ACHPR, 301/05, 50th Ordinary Session

Violation of articles 1, 2 (equal protection), 7(1)(b) (right to be presumed innocent), and 7(1)(d) (right to be tried within a reasonable time by an impartial tribunal)

Following the overthrow of the Mengistu regime (also known as the Dergue regime) in 1991, Ethiopia's new government imprisoned a number of former Dergue officials. After a year of detention, a Special Prosecutor's Office was established to investigate and try those complicit with the Dergue regime's crimes. The office suspended habeas corpus rights, ignored the statutes of limitations, and eliminated timing restrictions on how long the defendants could be held prior to trial. Trials finally began in October 1994, although the complaint alleged that the charges were vague and did not give the defendants sufficient notice of the allegations against them. Many of the trials were consolidated into joint proceedings, which contributed to the delay and made it harder for each defendant to be judged solely for his own actions. Lawyers were assigned to the defendants, but neither the defendants nor the lawyers had a choice, and the complainants argue that many of the lawyers were underqualified and failed to zealously represent their clients. At the time of the petition, in 2005, several defendants were still in the process of presenting their defense, others were awaiting a verdict, and still others were awaiting appeal. Some have died in detention.

In finding the communication admissible, the commission pointed out that a communication need not cite the particular articles of the African Charter that were allegedly violated, and that a communication may be valid even if it is in the form of a letter to the Special Rapporteur on Prisons and Conditions of Detention. Ethiopia failed to respond to complainant's allegations on these counts, creating a presumption against the state.

The African Commission found that Ethiopia violated articles 1, 2 (equal protection), 7(1)(b) (right to be presumed innocent until proven guilty), and 7(1)(d) (right to be tried within a reasonable time by an impartial tribunal). The commission held that the establishment of the special prosecutor's office violated the presumption of innocence because it was established with the stated purpose of recording the "brutal offenses" committed against the Ethiopian people and otherwise presupposed the guilt of the Dergue regime. Government officials also made public statements while the trials were ongoing that stated or presupposed the defendants' guilt. Finally, the extreme length of the defendants' pre-trial detention constituted de facto punishment for the alleged crimes before guilt had been proven. The commission also found a violation of article 7(1)(d) because 15 years from arrest to verdict is clearly not a reasonable time and, as noted above, the tribunal was not impartial. The commission discussed a number of causes for the delay, but noted that none were attributable to the defendants and that as a result all fell within the scope of responsibility of the state. The commission found that Ethiopia violated articles 1 and 2 by virtue of their violations of article 7.

[Link to full decision \(PDF\)](#)

Dino Noca v. Democratic Republic of the Congo

October 2012, ACHPR, 286/04, 52nd Ordinary Session

Violation of articles 3 (equal protection), 7(1)(c) (right to have one's cause heard), and 14 (right to property)

Mr. Noca was an Italian who lived in the DRC and owned a building there. On 2 July 1974, the DRC passed a law under which abandoned or undeveloped properties would be ceded to the state and then given to Congolese nationals without intervention by the courts. As a result, when Mr. Noca left the country he arranged for the State Owned National Insurance Company (SONAS) to manage his building, which should have been sufficient to avoid application of the law. Nevertheless, the property was declared abandoned. SONAS appealed and won, voiding the declaration of abandonment. However, despite being told of this verdict and while awaiting verification by SONAS, the head of the lands department granted the land to a third party, Kafwa Kasongo. The verdict was later confirmed, but the grant was not rescinded. However, it appears that the formalities of the transfer to Kasongo were not properly observed. Two years later the President of the DRC repealed the seizure law completely.

In 1985, the state brought suit in court to annul the grant to Kasongo. The court found for Kasongo and the appellate court affirmed. While the case was pending before the Supreme Court, Mr. Noca died. The court informed Mr. Noca's heir, Mr. Dino Noca, that he was summoned to continue the suit. However, upon his appearance, the court dismissed the claim without giving him a chance to be heard.

The African Commission found that state violated articles 3 (equal protection), 14 (right to property), and 7(1)(c) (right to have one's cause heard). The commission found a violation of article 14 because Mr. Noca was deprived of his property even though he complied with all requirements of DRC law: his land was under the control of SONAS and was not abandoned, but the head of the lands department nonetheless granted it to Mr. Kasongo. Furthermore, the department demonstrated a lack of diligence and goodwill by insufficiently investigating the legal status of the land prior to giving it to Mr. Kasongo. Article 1 creates a duty in the states to investigate and remedy violations of the other articles; thus the failings of the state employees were imputed to the state. The commission held that article 3 and article 7(1)(c) were violated because Mr. Dino Noca was called by the Supreme Court to continue his father's case but was not given a chance to present his defense. This violated Mr. Dino Noca's right to be heard. Furthermore, since the Supreme Court heard the other side's arguments but not Mr. Dino Noca's, his right to equal treatment before the law was violated.

Link to [full decision](#) (PDF)

Dabalorivhuwa Patriotic Front v. South Africa

April 2013, ACHPR, 335/06, 53rd Ordinary Session

No violation of article 2 (non-discrimination); differential treatment for a rational and legitimate purpose does not impair fundamental dignity of the parties.

No violation of articles 3 (equality before law), 13 (equal access to public services), and 15 (equal pay) because participation in privatization pension scheme voluntary

Venda was a self-governing state in 1979, at which time it created a pension plan for its government employees. Between 1992 and 1993, the pension plan underwent several changes that allowed beneficiaries to receive a lump sum payment to invest privately, and two different privatization schemes were created. In April 1994, Venda became part of South Africa, whose government did not fully fund the pension. In 1996, members of the Venda pension fund were transferred to South Africa's government pension fund. As a result of these successive changes and a number of other factors, there was variation in the payments made to various members of the Venda pension fund. The complainants sued in South African courts to obtain the full payments to which they felt entitled, but the courts dismissed the claim.

The only significant question regarding admissibility was the contention that the changes to the pension scheme which were the basis of the alleged violations occurred before South Africa became a party to the African Charter (in July 1996). However, because the consequences constituted an alleged continuing violation, in particular as the complainants had still not received their payments when South Africa joined the charter, the commission addressed them.

The complainants alleged that South Africa violated articles 2 (right to freedom from discrimination), 3 (right to equal protection), 13 (right to participate in government), and 15 (right to work) of the African Charter, on the grounds that the participants in the first and second privatization schemes were not treated equally. The commission rejected all four claims. It reasoned that, while article 2 prohibits improper discrimination, the distinction between the two privatization schemes is prima facie legitimate and complainants failed to show that it was improper or injurious to their human rights. The commission found that similarly placed people may be treated differently if doing so achieves a rational and legitimate purpose and does not impair the fundamental dignity of the parties. Furthermore, elements of the second scheme – such as its voluntary nature, the fact that payments were determined by an independent contractor, and the state took action to recover over-payments to members of the first scheme which increased the disparity – showed the government's good faith effort to equalize treatment of the groups. Finally, the commission pointed out that participating in either scheme was entirely voluntary and that it was beyond the scope of the commission to interfere with private financial decisions of citizens. As such, the commission dismissed the remaining claims.

Link to [full decision](#) (PDF)

Abdel Hadi, Ali Radi & Others v. Republic of Sudan

November 2013, ACHPR, 368/09, 54th Ordinary Session

Violation of article 1 (obligations of member states), article 5 (prohibition of torture and cruel, inhumane and degrading treatment and punishment), article 6 (right to liberty and security of the person) and article 7 (right to a fair trial)

The communication was submitted on behalf of Abdel Hadi Ali Radi, Omar Haroun, Abdelmagid Ali Adam Haroun, Ali Daoud Adam Yahia, Mariam Abakar Ali Omar and 83 other individuals (the victims). The victims are Sudanese nationals who fled from Darfur due to the war in the region in 2005. They settled in a refugee camp outside of Khartoum, the Sudanese capital. Police officers arrested the victims and held them for over 12 months, without

providing a reason for their arrest. The officers denied the victims any access to lawyers, family members, and medical care. It is also alleged that all complainants were tortured. Following a court order all complainants were released a little over a year from their first arrest.

Despite requests, the Directorate of Police did not launch an investigation into the allegations, a necessary step to establish prima facie wrongdoing and lift the police officers' general immunity, so the matter can be pursued in internal courts. After two years without an investigation, the complainants brought their case to the commission alleging violations of articles 1 (obligations of member state), 5 (prohibition of torture), 6 (right to liberty), and 7 (right to a fair trial) of the African Charter.

The commission considered that sustained beatings, whippings, falaga, food deprivation, death threats, and the other forms of ill-treatment along with the physical and psychological effects, clearly constituted torture. The incommunicado detention, lack of medical access, lack of toilet facilities, and death threats also qualified as inhuman and degrading treatment. The commission decided that the actions of the government, in imprisoning the people without legal justification and keeping them in detention for 12 months without charge, breached article 6. The commission also held that the one year period that had lapsed before the victims had appeared before a judge was too long. The victims were not told why they were arrested and they weren't allowed access to a lawyer for 9 months, which constitute violations of article 7 (1) (c) and (d). Lastly, the commission found a violation of article 1 of the charter on account of the respondent state's failure to respect and protect the rights guaranteed under the charter as well as its failure to investigate allegations of wrongdoings by its agents, provide adequate remedies to the victims, and put in place adequate legislative framework to protect the physical integrity of individuals.

Link to [full decision](#) (PDF)

Front for the Liberation of the State of Cabinda v Republic of Angola

5 November 2013, ACHPR, 328/06, 54th Ordinary Session

No violations of articles 14 (right to property), 19 (right to equality), 20 (right to self-determination), 21 (right to free disposal of wealth and natural resources), 22 (right to economic, social, and cultural development) and 24 (right to satisfactory environment)

The complainant brought the complaint against the Republic of Angola on behalf of the people of Cabinda (the victims). The complainant alleged that: the respondent state infringed on the rights of the people of Cabinda to the natural resources of Cabinda by failing to administer such resources to their benefit and by unilaterally granting exploitation licenses or concessions. Since the respondent state took over the resources of Cabinda, the people of Cabinda suffered comparatively higher degrees of unemployment, poverty, as well as insufficient health and educational services. According to the claimant, the respondent state denied the people of Cabinda their right to social and economic development as distinct groups by banning organizations that “espouse a uniquely Cabindan point of view”. The respondent state also violated the rights of the people of Cabinda to freely dispose of their wealth and natural resources. In addition, the state imposed a policy of “Angolanisation” on the people of Cabinda. Finally, the state violated the rights of the Cabinda people by

authorising exploitation activities that did not favor the development of the people of Cabinda and allowing companies to operate in manners that are harmful to the environment and human health.

Consequently, the complainant requested the commission to find that the respondent state violated of articles 14 (right to property), 19 (right to equality and rights), 20 (right to self-determination), 21 (right to free disposal of wealth and natural resources), 22 (right to economic, social, and cultural development) and 24 (right to a general satisfactory environment) of the African Charter.

The commission found no violation of article 14. The commission made the distinction between indigenous rights to land that warrant special protection, and other rights to land, which can be legitimately limited by the state on public interest grounds. It held that the complainant did not claim that the people of Cabinda are indigenous peoples who communally owned the land. Nor did the complainant claim that the state had limited the right to land in violation of appropriate laws and the public interest. As such, no violation was found. The commission also held that the complainant did not adduce evidence to support that the people of Cabinda were treated unequally in comparison to other people in Angola in violation of article 19 of the charter.

In relation to article 20, the commission reiterated its position that the right to self-determination is reserved for colonized people and that, in post-colonial Africa, the right can be enjoyed within existing territories of state parties to the charter. Accordingly, a distinctive pre-colonial history by itself does not support the complainant's argument that the people of Cabinda are entitled to unilaterally claim those rights. The commission also declined to find a violation of article 21 on the ground that the complainant did not challenge the respondent state's submission that resources are effectively managed for the benefit of all peoples of Angola and that oversight of the management of resources was exercised by the Angolan parliament, which includes elected representative of the people of Cabinda.

The commission dismissed the claim relating to article 22, on the ground that the complainant had not put forward any argument or evidence to substantiate the "Angolanisation" policy allegedly pursued in Cabinda. The commission finally held that the complainant did not adduce any evidence to support the alleged violation of the right to a satisfactory environment under article 24 or challenge the respondent state's submission on the legislative and administrative measures it adopted to protect the environment.

Link to [full decision](#) (PDF)

Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v. Angola and Thirteen Others

30 April 2014, ACHPR, 409/12, 54th Ordinary Session

No violation of article 7 (right to a fair trial) or article 26 (duty to guarantee independence of courts)

The communication was submitted on behalf of Mr. Luke Munyandu Tembani and Mr. Benjamin John Freeth (the victims) against the fourteen member states of the Southern African Development Community, the Summit of Heads of State of the Southern African Development Community (SADC Summit), and the Council of Ministers of SADC.

The Zimbabwean Government issued an executive order depriving the first victim of his title to agricultural land and forced him to leave his land. He complained to the Southern African Development Community Tribunal (SADC Tribunal), and the tribunal ruled in his favour. After Zimbabwe failed to comply with the SADC Tribunal's judgment, the first victim referred the case to the SADC Summit for measures to be taken against Zimbabwe, which were granted, but similarly defied by Zimbabwe. Similarly, the second victim, who represented a group of people, had a favourable ruling by the SADC Tribunal which remained unimplemented by the respondent state.

Two decisions of the SADC Summit in 2010 and 2011 suspended the SADC Tribunal and rendered its decisions unenforceable. Bringing his communication against the thirteen member states that comprise the SADC, as well as the SADC, and the SADC Council, the complainant alleged that these actions constituted violations of articles 7 and 26 of the African Charter, as well as the SADC Treaty and the International Covenant on Civil and Political Rights (ICCPR).

The commission considered that the requirement to exhaust local remedies could be dispensed of in this case as it would be unduly prolonged: it would require the complainant to file cases before the domestic courts of 14 states.

The commission considered that it could only base its decision on claims of violations of the African Charter by member states in accordance with article 45(2) of the African Charter. The commission agreed with the complainant that in appropriate cases, member states of an international organisation could bear direct responsibility for the wrongful acts and omissions of that international organisation, especially where the rights of third parties were involved. However, in this case the commission found that there was no violation of article 7 of the African Charter, as that article imposes an obligation on states to ensure the right to fair trial at the domestic level, rather than in a regional court.

The commission also considered that article 26 imposed no obligation on the respondent states vis-a-vis the SADC Tribunal, noting that article 26 applies to national courts which exercise compulsory jurisdiction over individuals who have no possibility of opting out of the coverage of the judicial authority of those courts. Accordingly, the commission found no violation of article 26.

Link to [full decision](#) (PDF)

Tsatsu Tsikata v. Republic of Ghana

April-May 2014, ACHPR, 322/06, 55th Ordinary Session

Violation of article 26 (independence of courts); no violations of articles 7 (1) (b) (the right to be presumed innocent until proven guilty), (c) (the right to counsel), and 7(2) (prohibition of retroactive application of penal law and punishment)

Tsatsu Tsikata, brought the communication against the Republic of Ghana. The complainant alleged that the respondent state was trying him retroactively for an act that did not constitute an offence at the time of the commission. He was arraigned before a "Fast Track Court" after being summoned to appear "in the name of the president." The complainant alleged that the respondent state breached the independence of the courts through public statements made by the spokespersons of the president and the attorney general, questioning

the initial decision of the Supreme Court (which was in the complainant's favour) and subsequently appointing a new Justice to review the Supreme Court decision. The Complainant therefore alleged violations of articles 7(1) (b), (c), 7(2), and 26 of the African Charter.

Regarding alleged violations of article 7 (1)(b), the commission was not convinced that the Fast Track Court's failure to provide reasoning for its ruling entailed a violation of the complainant's right to be presumed innocent.

In relation to article 7(2) of the African Charter, the commission found that the particulars of the charge of 'willfully causing financial loss to the state' occurred after Section 179A (3)(a) of the Criminal Code (criminalizing willfully causing loss to the state) came into force.

The commission did find a violation of article 26 of the African Charter due to a series of concerted actions taken by the executive directed towards a desired outcome on the review of the Supreme Court's earlier decision on the constitutionality of the Fast Track Court. It held that those actions, including what appeared to be a "targeted appointment of a Justice of Appeal and a strategic reconstitution of the Supreme Court", amounted to a "tacit escalated interference with the independence" of that court.

Link to [full decision](#) (PDF)

Communications Struck Out for Want of Diligent Prosecution

Mr. Kizila Watumbulwa v. Democratic Republic of the Congo

October 2012, ACHPR, 285/04, 52nd Ordinary Session

Struck out for want of diligent prosecution; failure to submit observations on merits

Mr. Kizila Watumbulwa leased his residence from Mr. Eugene Kasilembo Kyakenge, who claimed to be the owner of the property. As a result of litigation not discussed in detail here (see Communication 286/04), the DRC courts determined that the property was owned by Mr. Kafwa Kasongo. Mr. Kasongo initiated eviction proceedings against Mr. Kizila, which the judge approved. Accordingly, Mr. Kizila was evicted and his possessions were scattered on the street, which he claimed was humiliating and degrading. Mr. Kizila appealed the order of eviction, but the High Court and Supreme Court dismissed his claims.

Mr. Kizila filed his complaint on 12 February 2004, and the commission decided to be seized of it at its 35th ordinary session in the spring of 2004. Mr. Kizila filed his submission on admissibility during the 36th ordinary session. The State never filed a submission on admissibility, despite repeated reminders by the commission. At the 41st ordinary session, in 2007, the commission acted on the information available to it and declared the communication admissible.

Rule 108(1) of the rules of procedure sets a time limit of 60 days from a declaration of admissibility for the complainant to submit observations on the merits. Neither party submitted observations on the merits, despite repeated reminders by the commission. While rule 113 provides for extensions, neither party requested an extension. In May 2012, the commission sent a final letter to Mr. Kizila informing him that if he did not submit his observations on the merits by 31 July 2012, the commission would have to take a decision on the case. He again failed to do so, despite the numerous reminders and allowance of a time period greatly exceeding that set in rule 108(1). The commission therefore found a lack of diligent prosecution and dismissed the case.

Link to [full decision](#) (PDF)

Mr. Brahim Kone and Mr. Tieoule Diarra v. Cote d'Ivoire

October 2012, ACHPR, 289/04, 52nd Ordinary Session

Struck out for want of diligent prosecution; no update from parties after indication that they had reached a settlement

The complainants alleged that the Ivorian government carried out arbitrary arrests, summary executions, and large-scale forced expulsions in retaliation for public protests which followed the Ivorian Supreme Court's rejection of the candidature of Alassane Ouattara in September 2002. These retaliatory actions were focused on Senegalese, Nigerians, Guineans, Malians, and Burkinabes, including naturalized Ivorians of those heritages. The government also allegedly

seized the property of the victims.

The commission received the complaint on 12 May 2004, and decided to be seized of it at its 36th ordinary session in the fall of 2004. The state did not submit its observations on admissibility until 7 November 2005, despite reminders from the commission. On 23 May 2007, the complainants (who had yet to make a submission on admissibility, despite repeated reminders) asked the commission to stay its consideration of the communication while they pursued settlement talks with the state. On 30 April 2008, the complainants indicated to the commission that they had reached a settlement, on the condition that the respondent state offers technical guarantees. Over the next few years the commission repeatedly asked the parties for updates on the progress of negotiations. On 14 August 2012, the commission informed complainants that if it was not informed about the status of the negotiations within 1 month it would dismiss the complaint. No update was provided.

The commission clearly informed the complainants that the communication would be dismissed if they did not submit an update by 14 August 2012. Rule 113 provides for extensions, but neither party requested an extension. Therefore, in October 2012, the commission dismissed the complaint for lack of diligent prosecution.

Link to [full decision](#) (PDF)

AFTRADEMOP and Global Welfare Association (on behalf of the Moko-oh Indigenous Peoples of Cameroon) v. Cameroon

February 2013, ACHPR, 336/07, 13th Extra-ordinary Session

Struck out for want of diligent prosecution; failure to submit observations on merits

The applicants are members of agro-pastoral minority of Upper Moghamo, a clan in Batibo Sub-division of the Northwest of Cameroon, alleging that since the colonial period they have been oppressed and dominated by the Bali-Nyonga, a migrant tribe from Chamba in the North of Cameroon. The complainants alleged that their domination, enslavement, and oppression is still being perpetrated by the Cameroonian administration, and claim violations of articles 3, 4, 5, 10, 11, 12, 14, 19, 20(1), 20(2), 20(3), 21, and 24 of the African Charter.

During its 50th ordinary session, the commission considered and declared the communication admissible. The complainants were notified of this decision on 1 December 2011, and were requested to submit observations on the merits by February 2012. A reminder was sent on 21 August 2012, to no avail. Pursuant to rule 108(1), since a timely response was not received, the communication was struck out for lack of diligent prosecution.

Link to [full decision](#) (PDF)

Law Society of Zimbabwe et al v. Zimbabwe

February 2013, ACHPR, 321/06, 13th Extra-ordinary Session

Struck out for want of diligent prosecution; failure to submit observations on merits

The applicants are members of the legal profession in Zimbabwe and are contesting a constitutional amendment that ousts the jurisdiction of the Courts of Zimbabwe to entertain challenges against executive decisions regarding compulsory acquisition of property by the State. They argue that this gives the government unchecked power and is a violation of the

principles of transparency and accountability, in violation of articles 1, 3, 7, and 25 of the African Charter.

Although the government challenged the competence of the Commission to hear this case, the Commission considered that the violations alleged did raise material elements which may constitute human rights violations under the charter. It also reaffirmed that the Commission has adopted an *actio popularis* approach to standing, where applicants other than direct victims (and including NGOs) can bring complaints to the Commission without showing that their specific rights were violated.

The government claimed that the application was inadmissible under article 56(2), as it was incompatible with the Constitutive Act of the AU. But the Commission rejected this claim, as the application was against a State Party to the charter, alleged *prima facie* violations protected by the charter, related to events after ratification of the charter, and was sufficiently specific. There was also no requirement to exhaust domestic remedies in this case as the jurisdiction of the courts had been ousted in relation to the expropriation of land.

The Committee was seized of the communication at its 39th Ordinary Session, and after receiving observations on admissibility, found that the claim was admissible at its 49th Ordinary Session in May 2011 (see above). The Commission informed the parties of this decision in November 2011, and requested their observations on the merits within 60 days. In May 2012 and in November 2012, the Commission reminded the applicants to provide their submissions on the merits. However, despite additional emails from the Commission, no observations on the merits or request for extension of time was received. As a result, the Commission did not have sufficient evidence to make a determination of the merits and struck the case out for lack of diligent prosecution.

[Link to full decision](#) (PDF)

Artur Margaryan and Artur Sargsyan v. the Republic of Kenya

4 June 2014, ACHPR, 407/11, 13th Extra-ordinary Session

Struck out for want of diligent prosecution; failure to submit observations on admissibility

The complainants are two Armenian nationals who normally reside in the United Arab Emirates. They were granted work permits in Kenya and started an importing business there. After a history of prior dealings with the prime minister, involving personal loans allegedly being made available to the prime minister by the complainants, the prime minister made public allegations that the applicants carried out unlawful business activities and amongst other things, had connections with drug traffickers. The two complainants were later placed in custody and expelled from the respondent state to the United Arab Emirates. The police also searched their houses and seized their goods. The “Kiruki Commission” was set up to investigate the allegedly unlawful acts of the complainants. The complainants submit that their defense counsel was not allowed to attend the Kiruki Commission’s proceedings.

The complainants alleged a breach of articles 7(1)(a), (b), (c), (d) (right to a fair trial), 12(4) (right to freedom of movement), and 14 (right to property) of the African Charter.

The commission struck out the communication for want of diligent prosecution. According to rule 105(1) of the Rules of Procedures of the commission, the complainants have two months to submit evidence and arguments for admissibility after the commission decides to be seized

with a communication. The complainants failed to provide such evidence and arguments. Furthermore, despite numerous attempts from the commission including letters, emails, and telephone calls, the complainants did not engage in any kind of communication with the commission from the lodging of the original complaint in October 2011, until the complaint was struck out in February 2013.

Link to [full decision](#) (PDF)

Communications Rejected at Seizure Stage

Communication 457/13 - Pastor Key Mwand v. Democratic Republic of Congo

5 November 2013, ACHPR, 457/13, 54th Ordinary Session

Rejected for failure to establish the link between alleged violations and the respondent state; failure to allege particular violations under the charter

The complainant, Pastor Key Mwand, brought the communication against the Democratic Republic of the Congo. The complainant submitted that he, through the Kadi Lift Services Company, entered into a contract with the legal advisor of the state owned mining company, Gecamines, for the supply of fuel, with the intention that legal obligations would be created between himself, the legal advisor and Gecamines who were in partnership with each other.

The complainant alleged that the respondent state, through Gecamines, failed to honor the payment terms of the contract, had used its influence to stop his business, and caused the complainant to flee the DRC because of persecution. The complainant further claimed that the respondent state's influence has caused him to suffer material, moral, emotional, and financial damages (loss of properties, family, money and livelihood).

The complainant brought proceedings in the respondent state's courts for 'fraud, breach of contract, and prevention of specific performance.' However, he claimed that despite evidence and identification of the accused, the judges did not deliver a verdict against the respondent state or make any other orders, and the complainant alleged that the respondent state delayed and hindered the court process from 1999-2012.

The complainant made reference to the African Charter, but alleged violations of articles 2, 3, 6(1), 7, 9, 14(1) and 17 of the International Covenant on Civil and Political Rights.

The commission decided not to be seized of the complaint. The commission found that the complainant had not clearly established the link between Gecamines and the respondent state. Further, the complainant did not demonstrate how the latter has been involved in the violations. Moreover, the complainant had not alleged any particular articles of the African Charter that had been violated.

Link to [full decision](#) (PDF)

Uhuru Kenyatta and William Ruto (represented by Innocence Project Africa) v. Republic of Kenya

March 2014, ACHPR, 464/14, 15th Extra-ordinary Session

Rejected for failure to comply with article 56 (3) (prohibition of the use of disparaging or insulting language)

The complaint was filed by Innocence Project Africa, allegedly acting on behalf of Uhuru Kenyatta and William Ruto, the President and the Deputy President respectively of the Republic of Kenya (the victims), against the Republic of Kenya.

The complainant challenges the indictment of the victims by the International Criminal Court and urge the commission to protect the constitutional rights of the victims, and their right to be tried by a “jury of their peers” in their own country, alleging violations of articles 2 (right to freedom from discrimination), 3 (right to equality before the law), 4 (right to life), 5 (prohibition of torture), 6 (right to personal liberty), 7 (right to fair trial), 12 (right to freedom of movement), 14 (right to property), 16 (right to health), 19 (right of all peoples to equality and rights), 20(1) (right to self-determination) and 28 (individual duties) of the charter.

The commission decided not to be seized of the communication on the grounds that the complaint contained expressions such as: “sickening”; “charade”; “the respondent is part of the ploy”; “trample under”; “fishing expedition”; “demonization” which in the view of the commission is disparaging and insulting language contrary to article 56(3) of the charter. The commission also held that the alleged victims did not indicate the steps they had taken to exhaust local remedies, and did not demonstrate the link between the situation complained about and the articles of the charter allegedly violated, thereby failing to reveal a prima facie violation of the charter. It further concluded that the complainant should have sought to obtain the consent and signature of the victims in the context of the case.

The commission, therefore, held that the complaint did not comply with article 56 of the African Charter and did not fulfil the criteria for seizure provided under rule 93 (2) of the Commission’s Rules of Procedure relating to exhaustion of domestic remedies.

Link to [full decision](#) (PDF)

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