

**ICJ Kenya v Kenya** Communication No 385 of 2010

*The ACHPR accepts the Complainant (ICJ Kenya) responses to the state's submissions on Admissibility of Communication No. 385 of 2010.*

At the just ended session in Banjul, the African Commission on Human and Peoples Rights (ACHPR) breathed fresh air into a crucial communication against Kenya, when it accepted the complainant's response on admissibility. The Communication, brought before the ACHPR in 2010, alleges massive and serious violations of the African Charter arising from Operation *Okoa Maisha* in Mt Elgon in 2008, which led to the displacement of up to 200,000 people, the torture of up to 4000 people and the death of hundreds, with many others disappeared to date.

The communication claims individual remedies for the victims and also that Kenya be required to investigate, prosecute and punish the state and militia actors responsible for the violations. The ACHPR has now promised to draft a decision on the admissibility of the communication, after which arguments will be filed on the failures and violations committed by Kenya.

As far as ICJ-Kenya was concerned, the matter had stagnated since we filed our submissions on admissibility in November 2010 (after the case had been seized in October 2010). Although the time set for filing of state submissions expired, no state submissions were received by ICJ-Kenya. It was only after constant probing that the ACHPR sent the state a reminder in May 2012 to submit their submissions on admissibility. After a subsequent enquiry in November 2012 we were told that the state submissions had been sent via email in July 2012 with notice to respond within a month, which had expired in August 2012. Due to a communication breakdown the email had not reached us, and the Secretariat of the ACHPR rejected a request for time and informed ICJ Kenya that the ACHPR would only consider the documents in their custody.

The decision to reject the request came as a surprise considering the State's delays had been condoned so far, and in addition, a reminder to the state had been issued. In response therefore, and with the assistance of INTERIGHTS, we made a formal application for extension of time to be made and placed before the Commission and requested an oral hearing. The hearing was therefore to hear this formal application for extension of time under rule 113 of the ACHPR rules of procedure to allow and accept the Complainant's (ICJ Kenya) responses to the State's submissions on admissibility of the Communication.

The hearing was held on 15<sup>th</sup> April 2013 at approximately 4pm. Sarah Muthiga (ICJ Kenya) appeared before the ACHPR and Secretariat advised, in accordance with rule 98 (9) of the Rules of Procedure, by Bright Theu (Institute for Human Rights and Development in Africa) and Solomon Sacco (INTERIGHTS). The state was represented by Lawrence Ngugi and Peter Ngumi of the Office of the Attorney General.



From left: Bright Theu, Lawrence Ngugi, Sarah Muthiga, Peter Ngumi and Solomon Sacco (after the ACHPR hearing)

After the initial update and grounds for the application presented by ICJ Kenya, the ACHPR questioned the reasons for delay and sought clarification on the dates the documents were received. The ACHPR blamed the failure to receive the letter and documents in July 2012 from the Secretariat on the practice of NGOs to change their email addresses and focal points often, without informing the secretariat. This was refuted by ICJ Kenya, citing the complexities and inadvertent technological failures, in addition to the failure of prompt correspondence and communication. Further, it was argued that the state's delays had been condoned; it was only fair in this instance to accord similar treatment to the Complainant.

The state, upon being given the chance to respond, asked the ACHPR to consider the delays caused by the Secretariat itself including the loss of the documents in November 2011 causing the state to resend fresh copies in July 2012. It appears that the state had filed its submissions at the latest by November 2011 and while ICJ-Kenya was following up with the Secretariat it already had the documents, which appear to have been misplaced. It was therefore concluded that all parties had been responsible in part for the delay.

In the end, the ACHPR granted the application for extension and accepted the submissions prepared by ICJ Kenya in response to the State responses on admissibility. The ACHPR concluded stating it would read the submissions on record, so far filed, and make a determination as to admissibility in due course.

ICJ Kenya welcomes the decision, which brings closer an opportunity for victims of the Mt Elgon atrocities to access justice. We also call on all parties to Communications at the ACHPR, including the complainants, the states and the Commission itself, to strictly comply with time limits so as to avoid such hearings in the future.