

157/96 : Association pour la sauvegarde de la paix au Burundi / Kenya, Uganda, Rwanda, Tanzania, Zaire (DRC), Zambia

## Summary of Facts

1. The communication was submitted by the *Association pour la sauvegarde de la paix au Burundi* (ASP-Burundi, Association for the Preservation of Peace in Burundi), a [NGO] based in Belgium. The communication pertains to the embargo imposed on Burundi by Tanzania, Kenya, Uganda, Rwanda, Zaire (now Democratic Republic of Congo), Ethiopia, and Zambia following the overthrow of the democratically elected government of Burundi and the installation of a government led by retired military ruler, Major Pierre Buyoya with the support of the military.

2. The Respondent States cited in the communication are all in the Great Lakes region, neighbouring Burundi and therefore have an interest in peace and stability in their region. At the summit of the Great Lakes Summit held in Arusha, Tanzania on 31<sup>st</sup> July 1996 following the unconstitutional change of government in Burundi, a resolution was adopted imposing an embargo on Burundi. The resolution was later supported by the UN Security Council and by the OAU. All except the Federal Republic of Ethiopia were, at the time of the submission of the communication, state parties to the African Charter. Ethiopia acceded to the African Charter on 17<sup>th</sup> June 1998.

## Complaint

3. The Complainant claims that the embargo violates:

- [Article 4](#) of the African Charter, because it prevented the importation of essential goods such as fuel required for purification of water and the preservation of drugs; and prevented the exportation of tea and coffee, which are the country's only sources of revenue;
- [Article 17.1](#) of the African Charter, because the embargo prevented the importation of school materials;
- [Article 22](#) of the African Charter, because the embargo prevented Burundians from having access to means of transportation by air and sea;
- [Article 23.2.b](#) of the African Charter, because Tanzania, Zaire and Kenya sheltered and supported terrorist militia.

4. The communication also alleges violation of [Articles 3\(1\), \(2\) and \(3\)](#) of the [http://www.africa-union.org/root/au/Documents/Treaties/text/OAU\\_Charter\\_1963.pdf](http://www.africa-union.org/root/au/Documents/Treaties/text/OAU_Charter_1963.pdf) [OAU Charter](#), because the embargo constitutes interference in the internal affairs of Burundi.

## Procedure

5. The communication is dated 18<sup>th</sup> September 1996 and was received at the Secretariat on 30<sup>th</sup> September 1996.

6. At its 20<sup>th</sup> Session, held in October 1996 in Grand Bay, Mauritius, the [African] Commission decided to be seized of the communication.

7. On 10<sup>th</sup> December 1996, the Secretariat sent copies of the communication to the Ugandan, Kenyan, Tanzanian, Zambian, Zairian and Rwandan governments.

8. On 12<sup>th</sup> December 1996, a letter was sent to the Complainant indicating that the admissibility of the communication would be considered at the 21<sup>st</sup> Session.

9. At its 21<sup>st</sup> Session, held in April 1997, the [African] Commission decided to be seized of the communication and deferred consideration of its admissibility to the following session. It also requested the Respondent States Parties to send in their comments within the stipulated deadline.

10. At its 22<sup>nd</sup> Session, the [African] Commission declared the communication admissible and asked the Secretariat to obtain clarification on the terms of the embargo imposed on Burundi from the Secretary General of the OAU. The Respondent States Parties were also, once again, requested to

provide the [African] Commission with their reactions, as well as their comments and arguments as regards the decision on merit.

11. On 18<sup>th</sup> November 1997, letters were addressed to the parties to inform them of the [African] Commission's decision.

12. On 24<sup>th</sup> February 1998, the Secretariat of the [African] Commission wrote to the OAU Secretary General requesting clarification on the terms of the embargo imposed on Burundi.

13. On 19<sup>th</sup> May 1998, the Secretariat received the Zambian government's reaction to the allegations made against it by the plaintiff. It claims that the sanctions imposed on Burundi ensued from a decision taken by Great Lakes countries in reaction to the coup d'état of 25<sup>th</sup> July 1996, which brought Major Pierre Buyoya to power, ousting the democratically elected government of President Ntibantuganya.

14. According to Zambia, the said sanctions were aimed at putting pressure on the regime of Major Buyoya with a view to causing it to restore constitutional legality, reinstate Parliament, which is the symbol of democracy, and lift the ban on political parties. It was also aimed at causing the regime to immediately and unconditionally initiate negotiations with all Burundian groups so as to re-establish peace and stability in the country, in accordance with the decisions of the Arusha regional Summit of 31<sup>st</sup> July 1996.

15. Regarding the allegation that Zambia violated [Resolution 2625 \(XXV\)](#), adopted on 24<sup>th</sup> October 1970 by the General Assembly of the UN, the Zambian government claims that the UN Security Council, in [Resolution 1072 \(1996\)](#), upheld the decision of the Arusha regional Summit to impose sanctions on Burundi.

16. Furthermore, Zambia states that it has derived no benefit of any sort from the embargo imposed on Burundi. On the contrary – the embargo had affected not only the inhabitants of Burundi, but also those of the States that imposed it. In Zambia for example, it continues, many workers at the Mpulungu port were sent on unpaid leave because there was no work, as a result of the embargo. The Zambian State thereby lost many billion Kwacha in revenue. This, according to the Zambian government, is the cost Zambia accepted to pay to contribute to the international effort to promote democracy, justice and the rule of law.

17. Regarding the allegation of violation by Zambia of [Articles 3\(1\), \(2\) and \(3\)](#) of the Charter of the OAU on non-interference in the internal affairs of member States, the Zambian government recalls that the OAU, through its Secretariat, has held many meetings on the situation in Burundi. It concludes, therefrom that the decisions of the Arusha Regional Summit were endorsed by the OAU. Moreover, it points out that the sanctions imposed on Burundi were decided in consultation with the UN Organisation and the OAU.

18. As regards the allegation of violation by Zambia of the provisions of [Article 4](#) of the African Charter on the right to life and physical and moral integrity, Zambia points out that the Sanctions Monitoring Committee had authorised the importation into Burundi, through UN agencies, of essential items such as infants' food, medical and pharmaceutical products for emergency treatment, among others. It concludes therefore that the embargo is far from being a total blockade.

19. To the allegation of violation of [Article 17](#) of the African Charter on the right to education, Zambia responds with the same arguments indicated above.

20. Zambia stresses that it is a democratic state. This, it states, is enshrined in [Article 1.1](#) of its Constitution, which states that the country "...is a sovereign, unitary, indivisible, multiparty democratic State". It thereby justifies what it refers to as its support for the ongoing democratisation process in Africa and claims to abhor regimes led by ethnic minorities. The Great Lakes countries in general and Zambia in particular, it continues, were right in imposing sanctions on Burundi to bring about the restoration of democracy and discourage coups d'état in Africa.

21. On 8<sup>th</sup> September 1998, the Secretariat received the reaction of the Tanzanian government on the communication under consideration. The latter rejected the allegations made against its country and ended with a plea for inadmissibility of the communication on the grounds among others that it contains several contradictions which were only aimed at defending the aggrieved State's interests. This country proceeded to argue its case as follows:

22. "There is great confusion in the facts as presented by the Complainant; there are also many lies contained therein, particularly the accusation that Tanzania was preparing to send its army to Burundi

at the request of the International Monetary Fund and the World Bank which had promised to fund the operation. The undeniable truth, and ASP-Burundi knows it well, is that the essential reason why Tanzania and the other countries in the region decided to impose sanctions is to bring about the negotiation of a lasting peace among all Burundian parties. The sanctions are used as a means of pressure, and the results are palpable, as in the restoration of the National Assembly, the lifting of the ban on political parties and the initiation of unconditional negotiations among all parties to the conflict. The discrete contacts with Mr Léonard Nyangoma of CNDD are a step in the right direction envisaged in the imposition of the sanctions”.

**23.** Regarding the allegation that Tanzania violated [Article 4](#) of the African Charter, citing the article, it stresses,

“it is rather surprising to see ASP-Burundi using this article to support an allegation of human rights violations resulting from the sanctions. This association forgets or pretends to be unaware that the security situation in Burundi took a turn for the worse before and after the coup d'état and that it can be said emphatically that this provision of the Charter had been violated in a shameless way during this period. In June 1996, President S. Ntibantuganya and the then Prime Minister, Mr Nduwayo, came to Arusha to solicit sub-regional assistance in the form of troops.”

Tanzania then goes on to enumerate some cases of violation of human rights by the Burundian government. It emphasises, *inter alia*,

“that the war being waged against the Hutu militia by the Burundian army is conducted with ever increasing vigour, the massacre by the Burundian army of 126 refugees on their way back to their country from Tanzania, the establishment of concentration camps in Karugi, Mwamanya and Kayanza, camps that are populated by Hutus who are denied food even to the point of death, the detention of the Speaker of the National Assembly, Mr Léons Ngandakumana...etc”

**24.** Reacting to the allegation of violation of [Article 17.1](#) of the Charter, Tanzania points out that “education and educational institutions were not the targets of the embargo; however, due to its multiplier effect, they were affected. In view of this, at the meeting held in Arusha on 6<sup>th</sup> April 1997, the leaders of the countries that had imposed the embargo decided to exclude educational materials on the list of items that are not subject to the embargo. This was with a view to alleviating the suffering of ordinary citizens”.

**25.** Responding to the allegation of violation of [Article 22](#) of the African Charter, Tanzania argues that it is

“difficult to conceive that it is possible to enjoy economic and socio-cultural rights without enjoying the fundamental rights, which are the political rights that condition the others. The most fundamental and important rights, which deserve to be recognised and which are currently being trampled upon by the regime in power are political rights. The Great Lakes countries, other African countries and the international community at large would like to see an end to the cycle of violence in Burundi. This can only be achieved by way of a political settlement negotiated among the various Burundian factions”.

**26.** Tanzania argues

“the enjoyment of economic, cultural and social rights cannot be effective in the morass that Burundi has fallen into. Constitutional legality has first to be restored. That is the reinstatement of a democratically elected Parliament, the lifting of the ban on political parties, and the beginning of political talks involving all parties to the conflict...”.

In reaction to the allegation of violation of [Article 23\(2\)](#) of the [African] Charter, Tanzania states “it has never granted shelter to terrorists fighting against Burundi. However, Tanzania admits that it has always welcomed in its territory streams of refugees from Rwanda and Burundi each time trouble fares up in those two countries. Tanzania has always refused to serve as a rear base or staging post for any armed movement against its neighbours. Leaders of political parties and factions are welcomed in Tanzania just like other refugees are. But they are not allowed to carry out military activity against Burundi from Tanzanian territory.”

**27.** In response to the accusation that it violated the provisions of [Articles 3\(1\), \(2\) and \(3\)](#) of the OAU Charter, Tanzania states that “it has not violated any of the principles enshrined in those texts”. It emphasises that “despite its [small] size, Burundi remains a sovereign State like any other African State. The sanctions imposed on it by its neighbouring countries do not undermine its sovereignty or its territorial integrity, nor much less its inalienable right to its own existence”.

On the contrary, continues Tanzania, “the sanctions could play an important role in reminding the Burundian authorities of the content of the preamble to the OAU Charter, which states that all members of the OAU are conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples. Another provision states that in order to create conditions for human progress, peace and security must be established and maintained. Peace and security are lacking in Burundi and the sanctions imposed on it could be one of the means of achieving them through dialogue.”

**28.** As regards the allegation of violation of [Article 3\(4\)](#) of the OAU Charter, Tanzania comments “ASP-Burundi deliberately ignores one very important provision of the OAU Charter which states that OAU members solemnly affirm their adherence to the principle of the peaceful resolution of disputes by negotiation, mediation, conciliation and arbitration. The idea behind the imposition of the sanctions is precisely that of causing the application of this principle which a view to achieving lasting peace in Burundi. Contrary to ASP-Burundi’s contention that a dangerous precedent had been set, Tanzania believes that the countries of the Great Lakes region had set a favourable precedent. In the pursuit of the goals and objectives of the OAU, [Article 2\(2\)](#) of the OAU Charter states “to these ends, the member States shall cooperate and harmonise their general policies in the political and diplomatic fields.”

Tanzania concludes its exposition with a response to ASP-Burundi’s accusation that it had violated certain texts adopted by the UN, including some provisions of the Organisation’s Charter. It emphasises in particular that

“the concept of regional arrangement adopted by the Great Lakes countries is straight out of [Chapter VIII](#) of the [UN] Charter: Article 52 of the said Charter stipulates that regional arrangements may be used for keeping international peace and security, with the provis[ion] that such actions shall be consistent with the goals and principles of the [UN]. This provision allows for regional arrangements to be used for peaceful settlements before having recourse to the Security Council. And indeed, the Council encourages regional arrangements”.

**29.** “Tanzania does not believe that the imposition of sanctions is an interference in the internal affairs of Burundi. Tanzania is more concerned about the potential consequences of the instability currently prevailing in Burundi. All neighbouring countries share the same concern, since it is true that the instability in Burundi signifies for them inflow of refugees, instability in their own territory as a consequence of that prevailing in Burundi and which could transform into a generalised conflagration in the entire region. The imposition of sanctions should be seen as a preventive means of self defence aimed at avoiding seeing the region plunge into instability and chaos”.

**30.** Tanzania further emphasises that “in fact, all the sanctions that were adversely affecting the ordinary Burundian citizen were softened when the leaders of the Great Lakes countries met in Arusha on 16<sup>th</sup> April 1997. This included the lifting of the sanctions on food products, school materials, construction materials, as well as all medical items, and agricultural products and inputs”.

**31.** “The sixth Summit of the Great Lakes countries held in Kampala on 21<sup>st</sup> February 1998, unanimously decided to maintain the sanctions against the Burundian military regime. In this vein, the enforcement of the sanctions shall be scrupulously monitored by the organ established for this purpose; this is with a view to ensuring the implementation of the decisions taken by the countries of the region. It is important to note that the sanctions were declared by the countries of the region and not unilaterally by Tanzania. Hence, if ASP-Burundi has a just cause to defend, it should do so against the region and not against Tanzania”.

32. At its 24<sup>th</sup> Session held in Banjul, The Gambia, after hearing the Rwandan Ambassador, who presented his government's position on this affair, and considering the responses of Zambia and Tanzania, the [African] Commission decided to address a recommendation to the Chairman in Office of the OAU, with a copy to the Secretary General, requesting the States involved in the affair to find means of reducing the effects of the embargo. It was however stressed that this should be without any prejudice to the decision that the [African] Commission would take on the merits of the communication.

33. The Secretariat wrote to the parties informing them of the African Commission's decision.

34. On 26<sup>th</sup> March 1999, the Secretariat received the reaction of the Author of the communication to the Tanzanian and Zambian memoranda. In its view, Tanzania's argument that it did not violate [Article 4](#) of the African Charter is baseless. It argues that "after the coup d'état security in the country improved considerably. On the contrary, the embargo deprived the Burundian people of their basic needs, especially as regards health care and nutrition, claiming many victims" .

35. It continues:

"Tanzania claims not to have violated [Article 17](#) of the Charter with the argument that the embargo was relaxed in April 1997. This shows *a contrario* that before the relaxation, which had no effect in reality, the said provision had been violated; that is from 31/07/96 to April 1997".

36. According to the plaintiff,

"Tanzania also claims not to have violated [Article 22](#) of the Charter with the argument that of all human rights, it is what it refers to as the 'political right' that matters most"/[quote]. It continues by saying that Tanzania's argument is unfounded since "...the right to life for example is more important than any 'political right'. The choice is clear between someone who takes your life and someone who denies you your right to elect your head of State".

37. According to the plaintiff, "all groups that are attacking Burundi – PALIPEHUTU, FROLINA, CNDD... etc. – operate from that country".

38. The Complainant avers, "Tanzania claims not to have violated [Articles 3\(1\), \(2\) and \(3\)](#) of the OAU Charter. But imposing on Burundi a manner whereby it can 'resolve' its internal problems, under the pressure of an embargo, undoubtedly constitutes interference in the internal affairs of Burundi".

39. The Complainant continues:

"it is evident that Tanzania violated international law by imposing an embargo on Burundi. ASP-Burundi hereby calls on the [African Commission] to declare that country guilty and condemn it to pay damages"

. As regards the memorandum submitted by Zambia, the plaintiff states that:

40. "Zambia claims not to have violated [Resolution 2625 \(XXV\)](#) of the [UN] with the argument that the UN had approved the decision to impose the embargo. Whether the UN approved the measure or not changes nothing, for the initiative should have come from the [UN] and not the other way around! Hence, the decision to impose the embargo had no legal basis".

41. It continues:

"along the same line of thought, Zambia claims that it did not violate [Articles 3\(1\), \(2\) and \(3\)](#) of the OAU Charter for the reason that the OAU had approved the embargo. Once again, the approval came after the fact. It was not the OAU that mandated these countries to impose the embargo".

42. According to the petitioner,

"Zambia claims [...] that it did not violate [Article 4](#) of the [African Charter] with the argument that in April 1997, some alleviation measures were introduced. ASP-Burundi points out that this provision was violated from the time of the imposition of the embargo (August [19]96) to the date those measures were introduced (April [19]97), and the measures did not even bear any effect in reality".

**From the foregoing, the Complainant draws the following conclusion:**

43. "It is abundantly clear that Zambia, as well as Tanzania, have violated international law and that this violation caused very serious injury to the Burundian people. ASP-Burundi therefore urges the [African Commission] to declare Zambia guilty of this and to constrain it to pay the relevant damages".

44. On 24<sup>th</sup> March 2000, the Secretariat received a Note Verbale from the Kenyan Ministry of Foreign Affairs requesting a copy of the communication submitted by ASP-Burundi. The request was met, and a reaction is still being awaited.



**45.** At its 27<sup>th</sup> Ordinary Session held in Algeria, the [African] Commission examined the case and deferred its further consideration to the next session.

**46.** The [African] Commission's decision was communicated to the parties on 20<sup>th</sup> July 2000.

**47.** On 17<sup>th</sup> August 2000, the Secretariat of the [African] Commission received a Note Verbale from the Ministry of Foreign Affairs of the Republic of Uganda claiming that it had never been notified of the existence of this communication.

**48.** On 21<sup>st</sup> August 2000, the Secretariat of the [African] Commission replied the said Ministry stating among other things that such notification had long been served the competent authorities of the Republic of Uganda, in 1996, as soon as the case was filed. A copy of the communication was however forwarded to the Ministry.

**49.** During the 28<sup>th</sup> Ordinary Session held in Cotonou, Benin, from 26<sup>th</sup> October to 6<sup>th</sup> November 2000, the [African] Commission considered the communication and noted that although Ethiopia was a party to the case, it had never received notification of the communication.

**50.** The [African] Commission therefore asked the Secretariat to check whether Ethiopia had ratified the African Charter at the time the decision on the embargo was taken.

**51.** If it had, the Secretariat should then send it notification of the communication opposing that embargo and ask for its comments and observations on the issue.

**52.** Given that Ethiopia ratified the African Charter two years after the decision to impose the embargo on Burundi was taken, the Secretariat of the [African] Commission did not send a copy of the case file to Ethiopia for notification.

**53.** The Secretariat acted in this manner in accordance with the decision taken by the 28<sup>th</sup> Ordinary Session of the [African] Commission.

**54.** Moreover, this decision of the [African] Commission is in line with the principle of non-retroactivity of the effects of agreements, which is contained in [Article 28](#) of the *Vienna Convention on [sic] Treaties*.

**55.** The Secretariat informed the concerned parties about the decision of the 30<sup>th</sup> Session, and the Tanzanian and Zambian Embassies in Addis Ababa reacted by saying that their respective Governments were never informed of this case and they requested to be given a copy of the case file.

**56.** In reply, the Secretariat conveyed the documents requested to the two embassies, as well as all necessary information that could help elucidate the progress of the case submitted to the [African] Commission, in respect of which their States had contributed by submitting defence statements.

**57.** At the 31<sup>st</sup> Session (2<sup>nd</sup> to 16<sup>th</sup> May 2002, Pretoria, South Africa), delegates from some of the accused States (Democratic Republic of Congo, Rwanda, Tanzania, Uganda and Zambia) presented some oral comments on the position of their respective governments during the [African] Commission's consideration of the communications.

**58.** The said delegations in turn flatly rejected the allegations levelled against their governments pointing out in a nutshell, that:

- The sanctions adopted by the summit of the countries of the Great Lakes region held on 31<sup>st</sup> July 1996, in Arusha, Tanzania, was not aimed at providing advantages to the countries that made the decisions but, were meant to put pressure on the government brought about by the military coup d'état of 25<sup>th</sup> July 1996 in Burundi, with a view to bringing it to restore constitutional legality, democracy, peace and stability.
- The joint initiative taken by their governments were part of their contribution to the international efforts aimed at promoting the rule of law, in spite of the sacrifices that this initiative entailed for the people of the countries that initiated the embargo against Burundi, who also suffered from the consequences of the said embargo.

**59.** After the Session, the Secretariat informed the States concerned and the Complainant about the status of the communication by Note Verbale and by letter respectively.

**60.** At the 32<sup>nd</sup> Session held from 17<sup>th</sup> to 23<sup>rd</sup> October 2002, in Banjul, The Gambia, the [African] Commission was unable to consider the merits of communication, because of time constraints occasioned by the reduction of this Session's duration.

61. The African Commission consequently deferred consideration of the matter to its 33<sup>rd</sup> Ordinary Session scheduled to take place from 15<sup>th</sup> to 29<sup>th</sup> May 2003, in Niamey, Niger.

62. The African Commission considered this communication during the 33<sup>rd</sup> Ordinary Session and decided to deliver its decision on the merits.

## Law

### Admissibility

63. The [African] Commission had to resolve the matter of the *locus standi* of the author of the communication. It would appear that the authors of the communication were in all respects representing the interests of the military regime of Burundi. The question that was raised was whether this communication should not rather be considered as a communication from a state and be examined under the provisions of [Articles 47](#) through [54](#) of the African Charter. Given that it has been the practice of the [African] Commission to receive communications from NGOs, it was resolved to consider this as a calls action. In the interests of the advancement of human rights this matter was not rigorously pursued especially as the Respondent States did not take exception by challenging the *locus standi* of the author of the communication. In the circumstances the matter was examined under [Article 56](#).

64. Under [Article 56.5](#) and [56\(6\)](#) of the African Charter, communications other than those referred to in [Article 55](#) received by the [African] Commission and relating to human and peoples' rights shall be considered if they:

- (5) "are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged";
- (6) are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter".

65. These provisions of the African Charter are hardly applicable in this matter [insofar] as the national courts of Burundi have no jurisdiction over the State Respondents herein. This is yet another indication that this communication appropriately falls under communications from states [Articles 47 - 54](#)

66. However, drawing from general international law and taking into account its mandate for the protection of human rights as stipulated in [Article 45\(2\)](#), the [African] Commission takes the view that the communication deserves its attention and declares it admissible.

### Merits

67. The communication was submitted by the *Association pour la sauvegarde de la paix au Burundi* against States of the Great Lakes region (Democratic Republic of Congo, Kenya, Rwanda, Tanzania, Uganda, Zambia) and Ethiopia, in the wake of an embargo declared by these countries against Burundi on 31<sup>rd</sup> July 1996, following the coup d'état carried out by the Burundian army on 25<sup>th</sup> July against the democratically elected government.

68. The communication alleges that by its very existence this embargo violated and continues to violate a number of international obligations to which these states have subscribed, including those emanating from the provisions of the Charter of the OAU, the African Charter, as well as [Resolution 2625 \(XXV\)](#) of the General Assembly of the UN on the principles of international law applicable to friendly relations and cooperation between States on the basis of the UN Charter.

69. The states accused in the communication, particularly Zambia and Tanzania which submitted written conclusions on the case, reject the allegations against them, stating among other things, that while it is true that the decision to impose an embargo against Burundi was taken at the Arusha Summit of 31<sup>st</sup> July 1996 at which they participated, (with the exception of Zambia, which only joined

the others after the Arusha decision), it is equally true that following this, the decision to impose an embargo against Burundi was endorsed by the OAU and the UN Security Council.

**70.** The decision to impose the embargo against Burundi is thus based, by implication, on the provisions of [Chapter VII](#) and [Chapter VIII](#) of the UN Charter, regarding “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression” and ‘Regional Arrangements’, in the sense that the military coup which deposed the democratically elected government constituted a threat to, indeed a breach of, the peace in Burundi and the region.

**71.** The Respondent States took collective action as a sub-regional consortium to address a matter within the region that could constitute a threat to peace, stability and security. Their action was motivated by the principles enshrined in the Charters of the OAU and of the UN. The Charter of the OAU stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”. It goes on to promote international cooperation “to achieve a better life for the peoples of Africa...”.

**72.** The resolution to impose the embargo on Burundi was taken at a duly constituted summit of the states of the Great Lakes Region who had an interest in or were affected by the situation in Burundi. The resolution was subsequently presented to the appropriate organs of the OAU and the Security Council of the UN. No breach attaches to the procedure adopted by the states concerned. The embargo was not a mere unilateral action or a naked act of hostility but a carefully considered act of intervention which is sanctioned by international law. The endorsement of the embargo by resolution of the Security Council and of the summit of Heads of State and Government of the OAU does not merit a further enquiry as to how the action was initiated.

**73.** The UN Security Council is vested with authority to take prompt and effective action for the maintenance of international peace and security. In doing so, States agree that the Security Council ‘acts on their behalf...’. This suggests that, once endorsed by resolution of the Security Council, the embargo is no longer the acts of a few neighbouring states but that it imposes obligations on all member states of the UN.

**74.** The Charter of the UN allows that member states of the UN may be called upon to apply measures including, “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations...” . Economic sanctions and embargoes are legitimate interventions in international law.

**75.** The critical question and one which may affect the legitimacy of the action is whether such action as has been determined is excessive and disproportionate, is indiscriminate and seeks to achieve ends beyond the legitimate purpose. Sanctions therefore cannot be open-ended, the effects thereof must be carefully monitored, measures must be adopted to meet the basic needs of the most vulnerable populations or they must be targeted at the main perpetrators or authors of the nuisance complained of. The [UN] Human Rights Committee has adopted a General Comment in this regard precisely in order to create boundaries and limits to the imposition of sanctions.

**76.** We are satisfied that the sanctions imposed were not indiscriminate, that they were targeted in that a list of affected goods was made. A monitoring committee was put in place and situation was monitored regularly. As a result of these reports adjustments were made accordingly. The report by the Secretary General of the OAU is indicative of the sensitivity called upon in international law: “...besides their political, economic and psychological impact, they (the sanctions) continue to have a harsh impact on the people. The paradox is that they enrich the rich and impoverish the poor, without effectively producing the desired results... It would, perhaps, be appropriate to review the question of the sanctions, in such a way as to minimise the suffering of the people, maximise and make effective the pressures on the intended target” (CM/2034 (LXVIII), 68<sup>th</sup> Ordinary Session of the Council of Ministers, Ouagadougou, 1-6 June 1998).

**77.** We accept the argument that sanctions are not an end in themselves. They are not imposed for the sole purpose of causing suffering. They are imposed in order to bring about a peaceful resolution of a dispute. It is self-evident that Burundians were in dispute among themselves and the neighbouring states had a legitimate interest in a peaceful and speedy resolution of the dispute.

**78.** With regard to the allegations of interference in the domestic affairs of other sovereign States, the [African] Commission recognises that international law has provided careful procedures where such



interference may be legitimate. It is our view that the present matters falls on all fours with the provisions of international law.

**79.** Having thus dismissed the seminal charges against the Respondent States, however, the [African] Commission wishes to observe that the matters complained of here have now been largely resolved. The embargo has been lifted and by the agency of the OAU and with the active participation of neighbouring States a peace process is underway in Burundi.

## Decision of the African Commission

### **For these reasons, the African Commission,**

Finds that the Respondent States are not guilty of violation of the African Charter as alleged.

Takes note of the entry into force of the Burundi Peace and Reconciliation Agreement, alias [the] Arusha Accords, and that the Respondent States in the communication are among the States that have sponsored the said Accord.

Also notes the efforts of the Respondent States aimed at restoring a lasting peace, for the development of the rule of law in Burundi, through the accession of all Burundian parties to the Arusha Accord.

Welcomes the entry into force of the *Constitutive Act of the African Union* in 2000 to which the Republic of Burundi and all the Respondent States are now party, and which also provides for the promotion and respect of human and peoples' rights and the explicit censure of states that "come to power by unconstitutional means".

Done at the 33<sup>rd</sup> Ordinary Session held in Niamey, Niger from 15<sup>th</sup> to 29<sup>th</sup> May 2003.