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Communication 289/2004 – Mr Brahim Koné and Mr Tiéoulé Diarra vs Côte d'Ivoire

Summary of the Facts

1. The Complaint was filed at the African Commission on Human and Peoples' Rights on 12 May 2004 by Mr Brahim Koné and Mr Amadou Tiéoulé Diarra, on behalf of the High Council of Malian Foreigners in the Republic of Côte d'Ivoire and the African Solidarity Movement for Democracy and Independence (SADI) against Côte d'Ivoire, a State Party to the African Charter which it ratified on 6 January 1992.
2. The Complainants allege that following the decision of the Ivorian Supreme Court rejecting the candidature of Alassane Ouattara for the presidential election, there were demonstrations in protest against the said decision.
3. Following these demonstrations, agents of the ruling government in Abidjan started, from September 2002, to carry out arbitrary arrests, summary executions and massive and forced expulsions, mainly targeting Senegalese, Nigeriens, Guineans, Malians and Burkinabes, irrespective of whether they were naturalised Ivorians or not.

4. The Complainants further allege that the property of these victims, suspected to be members of Alassane Ouattara's Rally of the Republicans (RDR) party, were seized throughout Côte d'Ivoire.

Complaint

5. The Complainants allege that the facts stated above are a violation of Articles 2, 3, 4, 5, 8, 10, 11, 12, 14, 15, 18, 20, 21 and 23 of the African Charter on Human and Peoples' Rights by Côte d'Ivoire.

Procedure:

6. The complaint was received at the Secretariat of the Commission on 12 May 2004, and the latter acknowledged receipt on 23 June 2004.
7. At its 36th Ordinary Session held in Dakar, Senegal, from 23 November to 7 December 2004, the Commission considered *Communication 289/04, Mr Brahim Koné and Mr Tiéoulé Diarra vs Côte d'Ivoire* and decided to be seized of it.
8. By a letter and a note verbale dated 20 December 2004, the Secretariat of the Commission informed the parties of the decision of the Commission and requested them to submit their written observations on the admissibility of the communication.
9. At its 37th and 38th Ordinary Sessions, the Commission considered the complaint and, due to the lack of submissions from the parties, decided to defer its consideration on the admissibility of the said communication.

10. By letters dated 15 March 2005, 2 June 2005 and 12 September 2005, the Secretariat of the Commission reminded the parties to submit their conclusions to enable the Commission to decide on the admissibility of the case.
11. On 7 November 2005, the Secretariat of the Commission finally received the conclusions of the Respondent State on the admissibility of the case.
12. On 15 December 2005, 4 April 2006, 19 July 2006, 29 September 2006, 8 December 2006 and 2 May 2007, the Secretariat of the Commission informed the parties that the Commission could not consider the communication at its various sessions due to the lack of the Complainants' observations on the admissibility of the case. The Secretariat also reminded the Complainants in each letter to submit their conclusions to enable the Commission to decide on admissibility.
13. On 23 May 2007, the Secretariat received from the Respondent State a letter requesting the Commission to stay its consideration of the communication, given that the internal Ivorian mechanisms wanted to work with the Complainants to explore the possibility of an amicable settlement.
14. On 25 September 2007, the Secretariat of the Commission forwarded a copy of the letter on the amicable settlement initiated by the Respondent State to the Complainants for their consideration.
15. On 20 June 2007, 19 December 2007 and 19 March 2008, the Secretariat sent letters to the parties informing them that the Commission has considered Communication 289/2004 - *Mr Brahim Koné and Mr Tiéoulé Diarra vs Côte d'Ivoire* and decided to defer its decision while waiting for the Complainants' response to the proposed amicable settlement initiated by the Respondent State.

16. On 30 April 2008, the Complainants sent to the Secretariat of the Commission a letter indicating that they accepted the proposal of the Respondent State for a compromise settlement, on the condition that the Respondent State offers prior technical guarantees for such a settlement.
17. Between July 2008 and 14 August 2012, the Secretariat sent more than 5 letters reminding the parties, in particular the Complainants, to provide the Commission with information on the progress made regarding the negotiations conducted by the Government of Côte d'Ivoire towards an amicable settlement.
18. By a letter dated 14 August 2012 that was sent to the Complainants, the Secretariat reiterated its request for information on the progress made regarding the negotiations conducted by the Government of Côte d'Ivoire towards an amicable settlement of the present communication. The Secretariat also stated that if there is no response from the Complainants within one month, that is, by 14 September 2012, the Commission would be obliged to strike out the communication for lack of diligent prosecution.

Analysis of the Commission

19. Rule 113 of the Rules of Procedure of the Commission stipulates that when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension which shall not exceed one (1) month.

20. To date, the Complainants have not responded to the requests of the Secretariat of the Commission, including the one dated 14 August 2012, and have still not provided information on developments regarding the amicable settlement initiated by the Respondent State. They have also not requested any extension of the deadline in order to provide this information.

21. Given the prolonged and unjustified lack of response from the Complainants, the Commission has decided to take a decision on the matter.

Decision of the Commission

22. In view of the foregoing, the Commission, with seven Commissioners for and two against, finds that there is a lack of interest on the part of the Complainants and decides to strike out the communication for lack of diligent prosecution.

Done at the 52nd Ordinary Session of the Commission held from 9 to 22 October 2012 in Yamoussoukro, Côte d'Ivoire.

**Dissenting Opinions of Commissioner Catherine Dupe Atoki and Commissioner
Pansy Tlakula**

When considering the issue of striking out *Communication 289/2004 - Mr Brahima Koné and Mr Tiéoulé Diarra vs Côte d'Ivoire*, the members of the Commission did not reach a consensus, with seven Commissioners for and two against. Commissioner Catherine Dupe Atoki and Commissioner Pansy Tlakula held a different opinion from that of the majority of the Commissioners that the communication should be struck out. They were of the view that given that there is no available information on the progress made regarding an amicable settlement, the Commission, instead of striking out the Communication, ought to request the parties to submit their observations on admissibility and continue to consider the Communication.