

DECISION No. 7/1996 (ZAIRE)

Communication addressed to the Government of Zaire on  
3 October 1995.

Concerning: Lieutenant-Colonel Sylvestre Ningaba,  
Major Déo Bugewgene and Sergeant-Major Dominique Domero, on the  
one hand, and the Republic of Zaire, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.
3. (Same text as para. 3 of Decision No. 35/1995.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Zaire. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the communication, the above-mentioned persons, all three of whom are Burundian officers, were detained in Zaire in October 1993 apparently for illegal entry into the country and complicity in an assassination (whose alleged victim was President Ndadaye of Burundi). The three officers were allegedly being held pending an application for extradition by the Burundian Government in office. It has been reported that under the extradition agreement between the two countries, dated 21 June 1975, the Government with which the application is lodged may order the accused to be remanded in custody while the requesting Government formalizes the application within the specified three-month deadline. As the Government of Burundi requested extradition and remand in custody in April 1994, the deadline for formalization of the application expired in July of the same year. It was also reported that the Advocate-General of the Republic responsible for the Public Prosecutor's Office ordered the release of the persons concerned on 19 August 1994, although his decision was not carried out and the three officers continued to be held in prison, apparently without cause, since none of them had committed an offence in Zaire.
6. The facts as described above are referred to in the report of the Special Rapporteur on the situation of human rights in Zaire (E/CN.4/1995/67, paras. 195-198). According to the Special Rapporteur, the detention of the

three persons in question from April 1994 for the purpose of their extradition could not exceed three months, in conformity with the Extradition Treaty signed by Zaire and Burundi on 21 June 1975. They should thus have been released in July 1994 at the latest. This is confirmed by the fact that on 10 August 1994 the Public Prosecutor's Office decided, albeit somewhat belatedly, to order their release. Their continued detention cannot, therefore, be linked to any legal basis other than mere "reason of State", to use the words of the Special Rapporteur, and is thus arbitrary. It should, however, be recalled that, according to the Special Rapporteur, the aforementioned Sylvestre Ningaba and Dominique Domero were eventually extradited to Burundi, while Déo Bugewgene was released.

7. In the light of the above the Working Group decides:

(a) The case of Déo Bugewgene is filed under the terms of paragraph 14.1 (a) of the Working Group's revised methods of work.

(b) The detention of Sylvestre Ningaba and Dominique Domero between July 1994 and 2 September 1995, when they were handed over to the Burundian authorities, is declared to be arbitrary being manifestly no longer linked to any legal basis and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

Adopted on 23 May 1996.