

Rapporteur:**25th Ordinary Session: Commissioner Ben-Salem****26th Ordinary Session: Commissioner Ben-Salem****27th Ordinary Session: Commissioner Ben-Salem****28th Ordinary Session: Commissioner Ben-Salem****Summary of Facts:**

1. The communication is submitted by Huri-Laws, a Non-Governmental Organisation (NGO) registered in Nigeria on behalf of the Civil Liberties Organisation (CLO), another Nigerian human rights NGO based in Lagos.
2. This communication was received at the Secretariat on 24th October 1998, during the 24th ordinary session.
3. It alleges that since the formation of Civil Liberties Organisation on 15th October 1987, it has experienced all forms of harassment and persecutions from the Nigerian Government.
4. These harassment and persecutions have always been carried out in the form of arrests and detention of key members and staff of the Organisation and by way of raids and searches without warrants in the Organisation's offices by its Security Agency, the State Security Services (SSS).
5. One of such acts occurred on 7th November 1997, when Mr. Ogaga Ifowodo. A Lawyer with the Organisation was arrested at the Nigeria - Benin border while returning from the Commonwealth Summit in Edinburg, Scotland.
6. It is alleged that officers of the National Drug Law Enforcement Agency initially arrested Mr. Ogaga.
7. He was first detained at 15 Awolowo Road, Ikoyi, Headquarters of the State Security Service (SSS) for a few weeks before being transferred to Ikoyi Prisons, where he was held until April 1998.
8. The Complainant alleges that the victim was detained in a sordid and dirty cell under inhuman and degrading conditions. He was denied medical attention and access to his family and lawyer. He was also denied access to journals, newspapers and books.
9. It is further alleged that he was tortured and rigorously interrogated, and that at no time during his detention was he informed of any charges against him, nor were any charges ever brought against him.

10. In another incident which the Complainant contends adds up to the policy of persecutions on the part of the Respondent State, it is alleged that the Federal Military Government of Nigeria and its agents, in exercise of the powers under the State Security (Detention of Persons) Decree No. 2 of 1984 (as amended in 1990), arrested and detained Mr. Olisa Agbakoba without charge or trial between 8 May and 26 June 1998.
11. It is alleged that Agbakoba, founder and board member of Civil Liberties Organisation was arrested at Lagos airport on his return from Europe and detained at the SSS detention centre at Awolowo Road, Ikoyi, Lagos for 5 weeks.
12. On 10th May 1998, Mr. Agbakoba accompanied by officers of the SSS was brought to the offices of Civil Liberties Organisation for a search of the premises. Finding few employees present, because it was a non-working day, they departed.
13. On 11th May 1998, at about 10.30 a.m. Mr. Agbakoba was again brought by about 30 agents of the SSS, who raided Civil Liberties Organisation's headquarters in Lagos, apparently in search of incriminating materials on the activities of the United Action for Democracy (UAD) and CLO's involvement in its activities and rallies against the military dictatorship of Late General Sani Abacha and his self-succession bid.
14. It is further alleged that for about 7 hours, the agents of SSS carried out a thorough search on the offices of CLO from room to room, breaking down doors and ripping open drawers and cabinets in search of documents. During this time, all the staff present were kept confined to the library, only one at a time being summoned to assist with the searching of their desks.
15. At the end of the search, thirteen computers, official files and diskettes were carted away by the SSS operatives. Most of files and documents were copied and photocopied.
16. Despite various protests by the staff, no warrant of arrest was presented to justify the search.
17. Furthermore, 5 staff of CLO were arrested and detained at the Awolowo Road office of the SSS. Three were released the same night, while Mr. Okezie Ugochukwu and Ibrahim Ismail were detained for 2 days and nights and made to pass through very horrendous interrogation proceedings.
18. After their release, they were mandated to report on a daily basis to the SSS office, where they underwent continuing interrogations.
19. The Complainant alleges further that all but one computer were released.
20. It is also alleged that Mr. Agbakoba was later removed to Enugu Prison, 600 km east of Lagos.

21. The Complainant alleges further that throughout his period of detention, Mr. Agbakoba was neither charged with any crime, nor allowed access to his family, friends, doctors, or lawyers. He was later released on 26 May 1998.
22. It is alleged that lawsuits were filed at the Federal High Court by Huri-laws challenging the arrest and detention of Mr. Agbakoba, and by CLO challenging the arrest and detention of Mr. Ifowodo, but these suits were unsuccessful since the State Security (Detention of Persons) Decree No. 2 of 1984 oust the jurisdiction of the regular courts.

Complaint

23. The Complainant alleges violations of articles 5, 6, 7, 9, 10, 14 and 26 of the Charter.

Procedure:

24. At its 25th ordinary session held in Bujumbura, Burundi, the Commission decided to be seized of the communication, and requested the Secretariat to notify the Nigerian Government. It also requested the Secretariat to submit an opinion on the admissibility of the communication, particularly in accordance with Article 56(7) of the Charter, vis-à-vis Nigeria's current political situation.
25. On 19th August 1999, the Secretariat of the Commission notified the parties of this decision.
26. On 21st October 1999, the Secretariat received a letter from the Complainant informing it that they would not attend the 26th ordinary session due to lack of funds, but authorised Ms Julia Harrington of the Institute for Human Rights and Development to represent them.
27. During the 26th ordinary session held in Kigali, Rwanda, the Secretariat received a submission from Ms Julia Harrington on Additional Information relating to the Admissibility of the communication.
28. At its 26th ordinary session held in Kigali, Rwanda, the Commission declared the communication admissible and requested parties to submit written arguments on the merit of the case.
29. On 17th January 2000, the Secretariat notified parties of the above decision.
30. On 17th February 2000, the Secretariat received a Note Verbale from the High Commission of the Federal Republic of Nigeria in Banjul, referring to the above Note Verbale and requesting the Commission to forward the following documents to the country's competent authorities to enable them prepare for appropriate responses to the alleged violations:
 - (a) The Draft Agenda for the 27th ordinary session and the letter of invitation to the session from the Secretariat;
 - (b) A copy of the complaint that was attached to the Secretariat's Note;
 - (c) A copy of the Report of the 26th ordinary session.

31. Further to the above request, the Secretariat of the Commission on 8th March 2000, forwarded all the documents as requested, except the Report of the 26th ordinary session, together with a copy of the summary and status of all pending communications against Nigeria, as well as a copy each of the three communications (Nos. 218/98, 224/98 and 225/98) as submitted by their authors.
32. On 21st March 2000, the legal representative of the Complainant sent a letter to the Secretariat informing it that she would present oral arguments on the merits of the case and requested for likely dates of such presentation.
33. By letter of 22nd March 2000, the Secretariat informed her of the possible date and drew her attention to the necessity of submitting a copy of the address to it before presentation.
34. At its 27th ordinary session held in Algeria, the Commission deferred taking a decision on the merits of the case to the 28th ordinary session scheduled for Republic of Benin.
35. The above decision was communicated to parties on 6th July 2000.

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Admissibility

36. At its 25th ordinary session held in Bujumbura, Burundi, the Commission requested the Secretariat to give its opinion on the effect of article 56(7) of the Charter in view of the prevailing political situation in Nigeria. Relying on the case law of the Commission, the Secretariat submitted that based on the well established principle of international law, a new government inherits the previous government's international obligations, including responsibility for the previous government's misdeeds (see *Krishna Achutan and Amnesty International/Malawi, communications 62/92, 68/92 and 78/92*).
37. The commission has always dealt with communications by deciding upon the facts alleged at the time of submission of the communication (see *communications 27/89, 46/91 and 99/93*). Therefore, even if the situation has improved, such as leading to the release of the detainees, repealing of the offensive laws and tackling of impunity, the position still remains that the responsibility of the present government of Nigeria would still be engaged for acts of human rights violations which were perpetrated by its predecessors.
38. Furthermore, it submitted that the Commission should not be swayed by the political situation in the country as that is capable of foreclosing the Complainants' right to fair hearing, especially where they may be desirous of remedying the alleged violations. In any case, it noted that although Nigeria is now under a democratically elected government, the new constitution provides by its section 6(6)(d) that no legal action can be brought to challenge 'any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law'.

39. For the above reasons, and also for the fact that, as alleged, there were no avenues for exhausting local remedies, the Commission declared the communication admissible.

Merits

40. The Complainant alleges a violation of article 5 of the Charter with respect to Mr. Ogaga Ifowodo only. Article 5 states:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

It is alleged that Mr. Ogaga Ifowodo was detained in a sordid and dirty cell under inhuman and degrading conditions. Also that being detained arbitrarily, not knowing the reason or duration of detention, is itself a mental trauma. Moreover, added to this deprivation of contact with the outside world and health threatening conditions, it amounts to cruel, inhuman and degrading treatment.

Principle 1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides:

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Further, Principle 6 states:

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

It is worth noting that the term 'cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental (See UN Body of Principles).

41. The prohibition of torture, cruel, inhuman or degrading treatment or punishment is absolute. However, as observed by the European Court of Human Rights in ***Ireland v. United Kingdom*** when called upon to decide on similar provision of the European Convention on Human Rights "...the treatment prohibited under Article 3 of the Convention is that which attains a minimum level of severity and...the assessment of this minimum is, in the nature of things, relative.... It depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim etc."

(Judgement of 18th January 1987, series A no. 25 para. 162; see also the European Commission on Human Rights decision in **Jose Antonio URRUTIKOETXEA v. France**, Decision of 5th December 1996, p. 157). The treatment meted out to the victim in this case constitutes a breach of the provision of Article 5 of the Charter and the relevant international human rights instruments cited above. Also the denial of medical attention under health threatening conditions and access with the outside world do not fall into the province of ‘the respect of the dignity inherent in a human being and to the recognition of his legal status’, nor is it in line with the requirement of Principles 1 and 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This, therefore, is a breach of article 5 of the Charter.

42. The Complainant alleges that the detention of Ogaga Ifowodo and Olisa Agbakoba under the State Security (Detention of Persons) Decree No. 2 1984 (as amended in 1990) is a violation of their guaranteed right to freedom from arbitrary detention under Article 6 of the Charter. This is a violation of Article 6 of the Charter which provides:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for the reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested and detained.

43. Closely related to the above violation of Article 6 provision is the violation of the victims’ right to fair hearing. The Complainant states that up to the date of filing this communication no reason has been given for the victims’ arrest and detention, nor has any charges been pressed against them.

In expounding on the guarantees of the right to fair trial under the Charter, the Commission observed in its Resolution thus:

...the right to fair trial includes, among other things, the following:

(b) Persons who are arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them;

44. The failure and/or negligence of the security agents of the Respondent Government to scrupulously comply with these requirements is therefore a violation of the right to fair trial as guaranteed under the African Charter.
45. The Complainant alleges violation of Article 7 (1) (a) and (d) of the Charter in that Mr. Ifowodo and Agbakoba had no legal remedies available with which they could challenge their detentions. Further, that the absolute ouster of the jurisdiction of the court to adjudicate on the legality or otherwise of acts done under the Decree is a violation of the above provision, and also a contravention of Article 26 of the Charter.

Article 7(1) of the African Charter states:

Every individual shall have the right to have his cause heard. This comprises:

(a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;

Article 7 (1) (d) states:

Every individual shall have... the right to be tried within reasonable time by an impartial court or tribunal .

This is reinforced by Paragraph 2 (c) of the Commission's Resolution on Fair trial, which provides:

Persons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to be released.

46. The refusal and/or negligence on the part of the Respondent Government to bring Messrs. Ifowodo and Agbakoba promptly before a judge or other judicial officer for trial is therefore a violation of Article 7 (1) (d) of the Charter. This is also in violation of Article 26 which stipulates:

State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

47. The Complainant contends that CLO is human rights organisation, permitting its employees the opportunity to work together towards respect for human rights through organised programmes. Such programmes are aimed at enlightening the people of their rights. The persecution of its employees and raids of its offices in an attempt to undermine its ability to function in this regard, amount to an infringement of Articles 9 and 10 of the Charter providing for the rights to freedom of expression and association respectively.

Article 9 of the Charter provides:

(1) Every individual shall have the right to receive information.

(2) Every individual shall have the right to express and disseminate his opinions within the law.

48. The complaint above is therefore a violation of this provision. On the other hand, Article 10 states:

(1) Every individual shall have the right to free association provided that he abides by the law.

In its Resolution on the Right to Freedom of Association, the Commission observed thus:

- (1) The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standard;***
- (2) In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;***
- (3) The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.***

49. The above acts of the Respondent State constitute a violation of Article 10 of the Charter.

50. The Complainant alleges that the arrest and detention of Messrs Ifowodo and Agbakoba while returning from trips abroad is a violation of Article 12 (2) of the Charter. In this regard, it is contended that when re-entry points become sites of frequent harassment and arrest, freedom of movement is infringed. Further that the Charter provides for restrictions on the right to freedom of movement only by law for the protection of national security, law and order, public health or morality. The arrest and subsequent detentions of the two men is unjustified by any appeal to these restrictions.

Articles 12 (1) and (2) state:

- (1) Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.***
- (2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.***

51. The said encroachment, not being in consonance with the above restrictions is, therefore a violation of the victims' right to freedom of movement under Article 12 (1) and (2) of the African Charter.

52. The Complainant alleges that the search without warrant of CLO's premises and the seizure of its property is a violation of Article 14 of the Charter. It is

contended that Article 14 implies that owners have the right to undisturbed possession, use and control of their property however they deem fit.

Article 14 of the African Charter provides:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

53. The Complainant further contends that no evidence was ever offered of public need or community interest to justify the search and seizure. The said encroachment therefore is a violation of Article 14 of the Charter.
54. Unfortunately, to date, the government of the Federal Republic of Nigeria has neither responded to the Commission's request for additional information/observations nor for the arguments on the merits of the case. In these circumstances, the Commission is therefore compelled to accept the facts of the Complainant as the facts of this case.

For the above reasons, the African Commission

Finds the Federal Government of Nigeria in violation of Articles 5, 6, 7(1)(a) and (d), 9, 10(1), 12(1) and (2), and 14 of the African Charter.

**Done at the 28th Ordinary Session held in Cotonou, Benin
from 23rd October to 6th November 2000**