

143/95-150/96 : Constitutional Rights Project and Civil Liberties Organisation / Nigeria

Summary of Facts

1. Communication 143/95 alleges that the Government of Nigeria, through the State Security (Detention of Persons) Amended Decree No. 14 (1994), has prohibited any court in Nigeria from issuing a writ of *habeas corpus*, or any prerogative order for the production of any person detained under Decree No. 2 (1984). Complainant argues that this law violates the African Charter on Human and Peoples' Rights. The decrees were applied to detain without trial several human rights and pro-democracy activists and opposition politicians in Nigeria.

State Party's Response and Observations

2. The government has presented no written response to this allegation, but in oral statements before the Commission (31ST March 1996, 19th Ordinary Session, Ouagadougou, Burkina Faso, Chris Osah, Head of Delegation) maintains that no individual is presently being denied the right to *habeas corpus* in Nigeria. It has said that the provision of Decree No. 14 suspending the right to *habeas corpus* applies only to persons detained in respect of state security, and was implemented only between 1993 and 1995, during the period of political insecurity following the annulled elections of June 1993.

3. The government acknowledges that this provision is still on the statute books in Nigeria, but suggested that the right to *habeas corpus* would be restored in the future by saying, "as the democratisation of society goes on, all these [decrees] will become superfluous. They will have no place in society".

4. Communication 150/96 complains that the State Security (Detention of Persons) Decree No. 2 of 1984, which enables a person to be detained for a reviewable period of three months if he endangers State security, violates [Article 6](#) of the Charter. It also complains of the amended Decree of 1994 prohibiting the writ of *habeas corpus*.

5. The communication alleges that Mr Abdul Oroh, Mr Chima Ubani, Dr Tunji Abajom, Chief Frank Kokori, Dr Fred Eno, Honourable Wale Osun and Mr Osagie Obayunwana were detained under this decree, without charge, and also deprived of the right to bring *habeas corpus* actions. The communication alleges that they are detained in dirty, hidden (sometimes underground) security cells; they were denied access to medical care, to their families and lawyers; and were not permitted to have journals, newspapers and books. It is alleged that the detainees are sometimes subjected to torture and rigorous interrogations. The communication alleges that these conditions combined with the courts' inability to order the production of detained persons even on medical grounds, places the detainees' lives in danger. The communication alleges that these circumstances constitute inhuman and degrading punishment or treatment.

6. The communication complains that the clauses ousting the jurisdiction of the courts to consider the validity of decrees or acts taken there under is a violation to the right to have one's cause heard, protected by [Article 7\(1\)\(a\)](#) and [7\(1\)\(d\)](#) of the Charter, and undermines the independence of the judiciary in contravention of [Article 26](#).

7. The government has presented no response in respect of this communication.

Complaint

8. The communications allege violation of [Articles 5, 6, 7](#) and [26](#) of the Charter.

Procedure

9. Communication 143/95 dated 14th December 1994 and filed by the Constitutional Rights Project, was received at the Secretariat on 2nd February 1995.

10. In February 1995, the Commission was seized of the communication, and on 7th February 1995, a notification was sent to the Nigerian Government with the attached communication asking the said Government to respond within three months.

11. At the 18th Session in October 1995, the communication was declared admissible, and the Commission decided that the proposed mission to Nigeria should bring it up.

12. Communication 150/96 is submitted by Civil Liberties Organisation and dated 15th January 1996. It was received at the Secretariat on 29th January 1996.

13. At the 20th Session held in Grand Bay, Mauritius in October 1996, the Commission declared the communication admissible, and decided that the planned mission would take it up with the relevant authorities to Nigeria.

14. The mission went to Nigeria from 7th to 14th March 1997 and a report was submitted to the Commission.

15. The parties were duly notified of all the procedures.

Law

Admissibility

16. [Article 56.5](#) of the Charter requires that a Complainant exhausts local remedies before the Commission can consider the case. Section 4 (1) of the State Security (Detention of Persons) Decree No. 2 of 1984 states:

(1) no suit or other proceedings shall lie against any persons for anything done or intended to be done in pursuance of this Act.

Chapter IV of the Constitution of the Federal Republic of Nigeria is hereby suspended for the purposes of this Act and any question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Act shall not be inquired into in any court of law, and accordingly sections 219 and 259 of that Constitution shall not apply in relation to any such question.

17. In its decision on [communication 129/94](#), the Commission accepted the argument of the Complainants that the above ouster decrees create a situation in which "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results." ([ACHPR 129/94:9](#))

18. The ouster clauses create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos Division have occasionally found that they have jurisdiction; in 1995, the Court of Appeal in Lagos relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality". On their face, ouster clauses remove the right of courts to review decrees.

19. For these reasons, the Commission declared the communications admissible.

Merits

20. Both communications allege that the government has prohibited the issuance by any court of the writ of *habeas corpus* or any prerogative order for the production of any person detained under Decree No. 2 of 1984. Decree No. 14 denies the right to those detained for acts "prejudicial to state security or the economic adversity (sic) of the nation". A panel has the power to review the detentions but this is not a judicial body and its members are appointed by the President.

21. [Article 6](#) of the Charter reads:

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 reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

22. The problem of arbitrary detention has existed for hundreds of years. The writ of habeas corpus was developed as the response of common law to arbitrary detention, permitting detained persons and their representatives to challenge such detention and to demand that the authority either release or justify all imprisonment.

23. *Habeas corpus* has become a fundamental facet of common law legal systems. It permits individuals to challenge their detention proactively and collaterally, rather than waiting for the outcome of whatever legal proceedings may be brought against them. It is especially vital in those instances in which charges have not, or may never be, brought against the detained individual.

24. Deprivation of the right to habeas corpus alone does not automatically violate [Article 6](#). Indeed, if [Article 6](#) were never violated, there would be no need for habeas corpus provisions. However, where violation of [Article 6](#) is widespread, habeas corpus rights are essential in ensuring that individuals' [Article 6](#) rights are respected.

25. The question thus becomes whether the right to habeas corpus, as it has developed in common law systems, is a necessary corollary to the protection of [Article 6](#) and whether its suspension thus violates this Article.

26. The African Charter should be interpreted in a culturally sensitive way, taking into full account the differing legal traditions of Africa and finding its expression through the laws of each country. The government has conceded that the right to *habeas corpus* is important in Nigeria, and emphasised that it will be reinstated "with the democratisation of society."

27. The importance of *habeas corpus* is demonstrated by the other dimensions of communication 150/96. The government argued that no one had actually been denied the right to habeas corpus under the Amended Decree. Communication 150/96 provides a list of such individuals who are detained without charge in very poor conditions, some incommunicado, and who are unable to challenge their detention due to the suspension of this right. The government has however made no specific response to this communication.

28. First of all, in accordance with its well-established precedent (See the Commission's decisions in [communications 59/91, 60/91, 64/92, 68/92, 78/92, 87/93](#) and [101/93](#)), since the government has presented no defence or contrary evidence that the conditions of detention are acceptable, the Commission accepts the allegations that the conditions of detention are a violation of [Article 5](#) of the Charter, which prohibits inhuman and degrading treatment. The detention of individuals without charge or trial is a clear violation of [Articles 6](#) and [7 \(1\) \(a\)](#) and [\(d\)](#).

29. Furthermore, these individuals are being held incommunicado with no access to lawyers, doctors, friends or family. Preventing a detainee access to his lawyer clearly violates [7\(1\)\(c\)](#) which provides for the "right to defence, including the right to be defended by a counsel of his choice." It is also a violation of [Article 18](#) to prevent a detainee from communicating with his family.

30. The fact that the government refuses to release Chief Abiola despite the order for his release on bail made by the Court of Appeal is a violation of [Article 26](#) which obliges States parties to ensure the independence of the judiciary. Failing to recognise a grant of bail by the Court of Appeal militates against the independence of the judiciary.

31. These circumstances dramatically illustrate how a deprivation of rights under [Articles 6](#) and [7](#) is compounded by the deprivation of the right to apply for a writ of *habeas corpus*. Given the history of *habeas corpus* in the common law to which Nigeria is an heir, and its acute relevance in modern Nigeria, the amended Decree suspending it must be seen as a further violation of [Articles 6](#) and [7 \(1\) \(a\)](#) and [\(d\)](#).

32. The government argues that *habeas corpus* actions are still available to most detainees in Nigeria, and that the right to bring *habeas corpus* actions is denied only to those detained for state security reasons under Decree No. 2. While this does not create a situation as serious as when all detainees were denied the right to challenge their detention, the limited application of a provision does not guarantee its compatibility with the Charter. To deny a fundamental right to a few is just as much a violation as denying it to many.

33. The government attempts to justify Decree No. 14 with the necessity for state security. While the Commission is sympathetic to all genuine attempts to maintain public peace, it must note that too often extreme measures to curtail rights simply create greater unrest. It is dangerous for the protection of human rights for the executive branch of government to operate without such checks as the judiciary can usefully perform.

34. Finally, as noted in the admissibility section of this decision, there is a persistent practice of ouster clauses in Nigeria, which remove many vital matters from the jurisdiction of the ordinary courts. A provision for *habeas corpus* is not of much use without an independent judiciary to apply it. The State Security Decree contains a clause forbidding any court from taking up any matter arising under it. In previous decisions on ouster clauses in Nigeria, the Commission has found that they violate [Articles 7](#) and [26](#) of the Charter, the duty of the government to ensure the independence of the judiciary (See the Commission's decisions in [communications 60/91](#), [87/93](#) and [129/94](#)).

Holding

For these reasons, the Commission

Holds a violation of [Articles 5](#), [6](#), [7\(1\)\(a\)](#), [\(c\)](#) and [\(d\)](#), [18](#) and [26](#) of the Charter and

Requests the Government of Nigeria to bring its laws into conformity with the Charter.

Kigali, Rwanda, 15th November 1999.