

## 204/97 : Mouvement burkinabé des droits de l'Homme et des peuples / Burkina Faso

### Summary of Facts

1. The Complainant is the Chairman of the *Mouvement Burkinabé des Droits de l'Homme et des Peuples* (MBDHP), an NGO that enjoys observer status with the Commission. He cites a series of human rights violations reported to have been committed in Burkina Faso from the days of the revolutionary government to date. He therefore requests the Commission to strive to reveal the truth with regard to each of the cases reportedly not reacted to by the competent bodies in his country.

2. According to the Complainant, Burkina Faso, on 11<sup>th</sup> December 1991, re-established the rule of law by adopting a new constitution. This rekindled the hope that the issue of the human rights violations committed between 1983 and 1991 would be addressed for the common good of the citizens of that country. Unfortunately, this was not the case. Furthermore, acts prejudicial to civil and political liberties have been recorded.

3. The Complainant alleges that since the creation of the *Mouvement burkinabé des droits de l'Homme et des peuples* in 1991, the latter has recorded several cases of human rights violations in the country after having been informed on several occasions by the victims, and has unsuccessfully requested the judiciary to investigate the said cases. The most important case to be brought to the notice of this NGO was that of the suspension, discharge and removal of magistrates that took place on 10<sup>th</sup> June 1987. It is reported that the state afterwards granted an amnesty, as part of the reinstatement of workers wrongly laid off under the regime called the National Revolutionary Council that ruled Burkina Faso from 1983 to 1987. Many workers were reportedly reinstated, while many others were not.

4. The Chairman of MBDHP, Mr Halidou Ouedraogo, a Magistrate by profession, belongs to this second category as well as another magistrate, Mr Compaore Christophe. Both of them are claiming damages in kind. Their claim is unsuccessful to date. The Supreme Court, which was reportedly informed about the case fifteen years ago, has never taken a decision on the case.

5. According to the Complainant, although the situation has slightly improved, the magistrates concerned continue to suffer from harassment ranging from arbitrary postings to manipulations by the Supreme Council of Judges and Magistrates and irregularities in the promotion of some magistrates. The two unions of judges and magistrates are reported therefore to have, in a joint communiqué, denounced the subordination of their profession, corruption of judges and irregularities observed in the deliberations of the Supreme Council of Judges and Magistrates.

6. The Complainant alleges that many cases brought by him before criminal courts in 1990, 1991, 1994 and 1996 have not been examined.

7. In October 1991, the *Organisation pour la démocratie, mouvement du travail* (ODP/MT), the ruling party, is reported to have put on fire, through its militants, a Peugeot 505 vehicle of the Chairman of MBDHP. This incident is reported to have taken place in front of the headquarters of another political party now dissolved. La Convention pour le Peuple (CNPP/PS) whose militants, fearing to see their headquarters burnt down, are reported to have called on Mr Halidou Ouedraogo to prevent the crime. The Complainant maintains that the authors of this act of hooliganism are known and that some of them are reported to have been active again with the task of intimidating any person, especially workers and students, suspected of being against the powers that be.

8. Following the above-mentioned destruction of his vehicle, the complaint filed at the Ouagadougou Criminal Court by Mr Ouedraogo in October 1991 is said to have no effect.

9. In June 1994, after closing from work, Mr Ouedraogo is reported to have been a victim of an assassination attempt. When he put the engine of his car on, it reportedly exploded and he survived only by a miracle. A complaint was filed against X at the Ouagadougou Criminal Court for attempted assassination and destruction of personal property, but it was unsuccessful.

10. The Complainant claims that in May 1995 a student demonstration took a dramatic turn for the worse in a locality called Garango, two hundred kilometres from Ouagadougou. A gendarme identified

by MBDHP is reported to have shot dead at close range two students. The enquiry speedily launched by the said Movement which led to the submission of the case to the Criminal Court of the said locality is reported not to have been examined. On the other hand, one Ouya Bertin, a Member of Parliament representing his state, is reported to have accused the Chairman of MBDHP of manipulating the pupils and students. The former is reported to have declared at a gathering that Mr Halidou Ouedraogo should be got rid of and that in any case "measures have been taken to liquidate him". MBDHP filed a complaint of libel and death threats against its Chairman. This complaint is reportedly unsuccessful to date.

11. The Complainant also alleges several human rights violations as well as threats reportedly made against his person and restrictions placed on his movement during successive Burkina students' strikes in February, March and April 1997.

12. Referring to the turbulent political situation that prevailed in Burkina Faso between 1989 and 1990, the claimant alleges that there were many kidnapping cases followed by executions. He cited the disappearance of persons suspected or accused of plotting against the state, among them, Mr Guillaume Sessouma, who, at the time he was kidnapped and arrested, was a lecturer at the University of Ouagadougou and has not been seen since 1989. Similarly, Dabo Boukary, a medical student arrested in May 1990 by the Presidential Guard has not reappeared to this day. According to the claimant, the authorities are reported to have said that the latter might have fled.

13. As for assassinations, he cited those of Mr Clement Oumarou Ouedraogo, a University Professor and erstwhile representative of Burkina Faso at UNESCO, gunned down in the middle of a street in Ouagadougou on 9<sup>th</sup> December 1991, two farmers killed in 1996 at 120 kilometres from Ouagadougou during a so-called police routine check, as well as the 1994/95 assassinations of people in the locality of Kaya (Nahouri). He claims that commandos of the Po military garrison reportedly had a hand in the latter assassinations.

14. The Complainant alleges that his organisation has submitted all these cases of human rights violations, but without response to this day, to the following Burkinabe institutions:

- Competent jurisdictions;
- The ministries concerned (Justice, Interior and Defence);
- The Prime Minister; and
- The President of the Republic of Burkina Faso.

## Complaint

15. The Complainant claims that Burkina Faso has violated [Articles 3, 4, 5, 6, 7, 8, 9\(2\), 10, 11, 12 and 13\(2\)](#) of the African Charter on Human and Peoples' Rights. He requests the Commission to investigate the said violations and get the respondent state to:

- Explain the fate of the student, Dabo Boukary;
- Disclose the conclusions of the inquiry on the assassination of Mr Clement Oumarou Ouedraogo;
- Take measures that can help find a legal solution to all these human rights violation cases; and
- Compensate the victims of such violations.

16. In support of his petition, the Complainant provided abundant documentation on most of the alleged human rights violation cases.

## Procedure

17. The communication is dated 25<sup>th</sup> April 1997. It was received by the Secretariat of the Commission by fax on 25<sup>th</sup> May 1997. However, the Complainant observed that there were annexes to the communication and the Secretariat had to wait to receive them.

**18.** On 20<sup>th</sup> August 1997, the Secretariat acknowledged receipt of the communication and asked the Complainant to indicate precisely the points contained in the communication that he wanted the Commission to look into and to attach the documents mentioned.

**19.** On the same day, a Note Verbale was faxed to the Burkinabé Ministry of External Relations and Co-operation forwarding a copy of the communication and requesting for the Ministry's reaction within three months, in accordance with the relevant provisions of the Rules of Procedure. There was no reaction to this Note Verbale.

**20.** On 5<sup>th</sup> December 1997, the Secretariat received a correspondence from the Complainant reiterating the grievances in his earlier complaint instead of providing the clarifications requested.

**21.** At its 23<sup>rd</sup> Session, the Commission decided to be seized of the communication and deferred examination of the issue of admissibility to the 24<sup>th</sup> Session.

**22.** On 1st June 1998, a Note Verbale was sent to the Burkinabe government informing it of this decision and calling for its reaction to the admissibility of the communication that was sent. A similar letter was also addressed to the Complainant.

**23.** On 13<sup>th</sup> July, the Secretariat received a fax from the Burkinabé Minister of Justice and Guardian of the Seals stating that the Ministry of Foreign Affairs had informed him of a complaint submitted against Burkina Faso by the *Mouvement burkinabé des droits de l'Homme*. He stated that the complaint was written in English and requested that the Secretariat provide him with the French version of the complaint since the working language of the country is French.

**24.** On the same day, the Secretariat reacted to the above-mentioned fax. The minister was informed that the Commission had been seized of the communication and that the Respondent State was required to forward its submissions on the issue of admissibility for examination at the 24<sup>th</sup> Session, scheduled for October 1998.

**25.** At its 24<sup>th</sup> Ordinary Session, the Commission heard the parties. Both parties expressed the desire to settle the dispute amicably and requested the Commission's assistance to that effect.

**26.** The Commission declared the communication admissible. However, in view of the desire of the parties to settle the dispute amicably, it offered its good services for that purpose.

**27.** On 10<sup>th</sup> November 1998, the parties were informed by the Secretariat of the Commission's decision.

**28.** At its 25<sup>th</sup> Session, the Commission requested for information on the progress of the settlement between the parties.

**29.** During the 26<sup>th</sup> Session, the Commission learnt that there had been no reaction from the parties with regard to the progress of the settlement. The Commission therefore decided to defer examination on the merits of the communication to the 29<sup>th</sup> Session.

**30.** On 10<sup>th</sup> December 1999, the Secretariat informed the parties of the Commission's decision.

**31.** At the 27<sup>th</sup> Ordinary Session held in Algiers, Algeria, the Commission heard the parties to the complaint and decided that the respondent state should take the initiative in inviting the Complainant for an amicable settlement of the case, failing which, the Commission would proceed to consider the case on its merits.

**32.** On 20<sup>th</sup> July 2000, the Secretariat of the Commission conveyed the above decision to the parties.

**33.** On 17<sup>th</sup> August 2000, the Secretariat of the Commission received a Note Verbale from the Respondent State informing the Commission that they had complied with its decision and invited the Complainant for a meeting on 14<sup>th</sup> August 2000.

**34.** At the 28<sup>th</sup> Ordinary Session, the Commission heard both parties. The respondent state informed the Commission that the case of the victims of massacres committed by police officers had been settled but that the other cases were pending. The Complainant confirmed that a meeting had been held but that there had been no progress in so far as settling the matter was concerned.

# Law

## Admissibility

**35.** [Article 56.5](#) of the African Charter on Human and Peoples' Rights requires that prior to a Complainant having recourse to the Commission, communications received in accordance with [Article 55](#), should be "...sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".

**36.** In this particular case, the Complainant had approached the competent national authorities with a view to obtaining redress for the alleged violations and to clarify the cases of disappearances and assassinations that had remained unpunished. At its 24<sup>th</sup> Ordinary Session, the Commission heard both parties. They expressed their desire to reach an amicable solution and requested its assistance to this end. The Commission informed the parties that it was at their disposal for purposes of reaching an amicable settlement but the parties did not utilise this avenue. The communication was declared admissible.

## Merits

**37.** [Article 3](#) of the Charter stipulates:

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

**38.** In order to redress the effects of the suspensions, dismissals and retirements of magistrates that took place on 10<sup>th</sup> June 1987, the Burkinabé state introduced an amnesty aimed at rehabilitating workers abusively removed under the so-called "Conseil National de la Révolution" regime, which ruled over Burkina Faso from 1983 to 1987. As part of the said measure, many workers were restored to their posts, while many others, according to information available to the Commission, remained unaffected by the measure. The Complainant, Mr Halidou Ouédraogo, and Mr Compaoré Christophe, both magistrates, fall in the latter category. They both demanded to be compensated in kind. The request made by Mr Compaoré has not been met to date. The Supreme Court, before which the case was filed over fifteen years ago has passed no verdict on it. The Commission further notes that no reason with a basis in law was given to justify this delay in considering the case. Nor does the Respondent State give any legal reasons to justify the retention of the punishment meted out to these two magistrates. The Commission considers therefore that this is a violation of [Articles 18 and 19](#) of the *Fundamental Principles on the Independence of the Judiciary*, adopted by the seventh United Nations Congress on Crime Prevention and the Treatment of Offenders, held from 26<sup>th</sup> August to 6<sup>th</sup> September 1985, and confirmed by the General Assembly in its Resolutions 40/32 of 29<sup>th</sup> November 1985 and 40/146 of 13<sup>th</sup> December 1985.

**39.** In communication [39/90 A. Pagnoule \(for A. Mazou\) /Cameroon](#), para. 17, the Commission stated:

"Considering that the case under examination concerns the possibility of Mr Mazou exercising his profession and that there are undoubtedly some people who depend on him for their survival, two years without any action on a case... constitutes a violation... of the Charter".

**40.** It is abundantly clear, as the Commission has already noted that the respondent state has shown no reasons why the rehabilitation measure was applied in a selective manner. The Commission also wonders at the reasons behind the Supreme Court's failure to proceed with the case. Fifteen years without any action being taken on the case, or any decision being made either on the fate of the concerned persons or on the relief sought, constitutes a denial of justice and a violation of the equality of all citizens before the law. It is also a violation of [Article 7.1.d](#) of the African Charter, which proclaims the right to be tried within a reasonable time by an impartial court or tribunal.

**41.** [Article 4](#) of the Charter states that:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.

**42.** The communication contains the names of various people who were victims of assassinations, forced disappearances, attacks or attempted attacks against their physical integrity, and acts of intimidation. The respondent state did not deny these facts. Also, the state has never published the results of the Commission of Enquiry set up following the assassination of Mr Clement Oumarou Ouédraogo, nor did it identify the perpetrators of the offences or take any measures against them. In conformity with its own jurisprudence which states that “whenever allegations of human rights abuses are not contested by the accused State, ... the Commission shall decide on the basis of the facts provided by the plaintiff and treat such facts as they are presented to it” (See communications [25/89](#), [47/90](#), [56/93](#) and [100/93 para. 40](#)), the Commission therefore applies the same reasoning to the facts related in the present communication. The Commission would also like to reiterate a fundamental principle proclaimed in [Article 1](#) of the Charter that not only do the States Parties recognise the rights, duties and freedoms enshrined in the Charter, they also commit themselves to respect them and to take measures to give effect to them. In other words, if a State Party fails to ensure respect of the rights contained in the African Charter, this constitutes a violation of the Charter, even if the State or its agents were not the perpetrators of the violation (See [communication 74/92 para. 25](#) ).

**43.** The communication points to a series of human rights violations linked to certain events that occurred in Burkina Faso in 1995 and additional elements attached to the dossier describe the human rights violations perpetrated at Garango, Kaya Navio, as well as the murder of a young peasant at Réo. The communication also mentions the deaths of citizens who were shot or tortured to death, as well as the deaths of two young students who had gone onto the streets with their colleagues to express certain demands, and to support their secondary school colleagues and higher institution teachers. The Commission deplores the abusive use of means of state violence against demonstrators even when the demonstrations are not authorised by the competent administrative authorities. It believes that the public authorities possess adequate means to disperse crowds, and that those responsible for public order must make an effort in these types of operations to cause only the barest minimum of damage and violation of physical integrity, to respect and preserve human life.

**44.** [Article 5](#) of the Charter guarantees respect for the dignity inherent in the human person and the recognition of his legal status. This text further prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture cruel, inhuman or degrading punishment and treatment. The guarantee of the physical integrity and security of the person is also enshrined in [Article 6](#) of the African Charter, as well as in the [Declaration on the Protection of all Persons against Forced Disappearances](#), adopted by the General Assembly of the United Nations in Resolution 47/133 of 18<sup>th</sup> December 1992, which stipulates in Article 1(2) :

“Any act leading to forced disappearance excludes the victim from the protection of the law and causes grave suffering to the victim and his family. It constitutes a violation of the rules of international law, especially those that guarantee to all the right to the recognition of their legal status, the right to freedom and security of their person and the right not be subjected to torture or any other inhuman or degrading punishment or treatment. It also violates the right to life or seriously imperils it”.

The disappearance of persons suspected or accused of plotting against the instituted authorities, including the arrests carried out by the presidential guard and subsequent disappearance in May 1990 of Mr Guillaume Sessouma and a medical student, Dabo Boukary, constitute a violation of the above-cited texts and principles. In this last case, the Commission notes the submission of a complaint on 16<sup>th</sup> October 2000.

**45.** [Article 8](#) of the Charter provides for the guarantee of the freedom of conscience, the profession and the free practice of religion. While the Complainant claims violation of these treaty provisions, the communication does not contain any elements that could reasonably lead to such a conclusion. Information before the Commission provides no indication that the Complainant or any other person cited in the communication had tried to express or exercise their freedom of conscience or to profess their faith. The Commission is of the view, therefore, that violation [Article 8](#) has not been established. It adopts the same position as regards the allegations of violation of [Articles 9\(2\)](#), [10](#) and [11](#) of the Charter.

46. [Article 12.2](#) stipulates:

“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”.

47. The communication alleges that on 6<sup>th</sup> August 1995, Mr Nongma Ernest Ouédraogo, Secretary General of the political party known as “*Bloc Socialiste Burkinabé*” was prevented from leaving the national territory, following the publication by the said party of a statement on the situation in the country. Information available to the Commission does not point to any threat to public security or morality that either the journey or even the person of the said Mr Ouédraogo could have represented. Therefore, it agrees that there was violation of [Article 12.2](#).

48. The Complainant claims that there was dismissal of many workers at Poura on account of a strike. Unfortunately, the information provided to the Commission do not allow it to establish in any certain manner that there was violation of [Article 13.2](#).

## Holding

**For these reasons, the Commission Holds** a violation of [Articles 3, 4, 5, 6 7 \(1\)\(d\)](#) and [12\(1\)](#) of the African Charter.

**Recommends** that the Republic of Burkina Faso draws all the legal consequences of this decision, in particular, by:

- Identifying and taking to court those responsible for the human rights violations cited above
- Accelerating the judicial process of the cases pending before the courts;
- Compensating the victims of the human rights violations stated in the complaint.

Tripoli, Libya, 23<sup>rd</sup> April to 7<sup>th</sup> May 2001.