

Communication 129/94

Civil Liberties Organisation/Nigeria

FACTS

1. The communication is filed by the Civil Liberties Organisation, a Nigerian based NGO. The communication alleges that the military government of Nigeria has enacted various decrees in violation of the African Charter, specifically the Constitution (Suspension and Modification) Decree No. 107 of 1993, which not only suspends the Constitution but also specifies that no decree promulgated after December 1983 can be examined in any Nigerian Court; and the Political Parties (Dissolution) Decree No. 114 of 1993, which, in addition to dissolving political parties, ousts the jurisdiction of the courts and specifically nullifies any domestic effect of the African Charter.
2. The communication further alleges that the ousting of the jurisdiction of the courts in Nigeria to adjudicate the legality of any decree threatens the independence of the judiciary and violates Article 26 of the African Charter.
3. The communication also complains that this ouster of the jurisdiction of the courts deprives Nigerians of their right to seek redress in the courts for government acts that violate their fundamental rights, in violation of Article 7.1(a) of the African Charter.

PROCEDURE BEFORE THE COMMISSION

4. The complaint is dated 31 December 1993.
5. On 29 July 1994 a copy of the communication was sent by the Secretariat of the Commission to the state concerned for its comments.
6. At the 16th Ordinary Session of the Commission, the communication was declared admissible.
7. On 10 January 1995 the parties were informed of the admissibility decision.

LAW

Admissibility

8. The communication meets all the specifications for admissibility set out in Article 56 of the Charter. With specific reference to Article 56.5, the Commission accepted the complainant's argument that since the decrees complained of oust the jurisdiction of the courts to adjudicate their validity, "it is reasonable to presume that local remedies will not only be prolonged but are certain to yield no results."

The Merits

9. Article 7 of the African Charter provides:

“Every individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts violating his fundamental rights as guaranteed by conventions, law, regulations and customs in force.”

10. The Constitution (Suspension and Modification) Decree 1993, section 5 reads:

“No question as to the validity of this Decree or any other Decree made during the period 31st December 1983 to 26th August 1993 or made after the commencement of this Decree or of an Edict shall be entertained by a court of law in Nigeria.”

11. The Political Parties (Dissolution) Decree 1993, section 13(1) reads:

“Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of this Decree.”

12. The reference in Article 7.1(a) to “fundamental rights as guaranteed by conventions...in force” refers to the rights in the Charter itself, among others. Given that Nigeria ratified the African Charter in 1983, it is presently a convention in force in Nigeria. If Nigeria wished to withdraw its ratification, it would have to undertake an international process involving notice, which it has not done. Nigeria cannot negate the effects of its ratification of the Charter through domestic action. Nigeria remains under the obligation to guarantee the rights of Article 7 to all of its citizens.

13. The ousting of jurisdiction of the courts of Nigeria over any decree enacted in the past ten years, and those to be subsequently enacted, constitutes an attack of incalculable proportions on Article 7. The complaint refers to a few examples of decrees which violate human rights but which are now beyond review by the courts. An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed.

14. Article 26 of the African Charter reiterates the right enshrined in Article 7 but is even more explicit about States Parties’ obligations to: “guarantee the independence of the Courts and ... 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.” While Article 7 focuses on the individual’s right to be heard, Article 26 speaks of the institutions which are essential to give meaning and content to that right. This Article clearly envisions the protection of the courts which have traditionally been the bastion of protection of the individual’s rights against the abuses of state power.

15. The communication notes that Nigeria fully incorporated the African Charter upon ratification in 1983. The African Charter (Ratification and Enforcement Act) specifies:

“ 1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples’ Rights... shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

It is this Act that is repealed by clause 13(1) of the Political Parties Dissolution Decree.

16. Any doubt that may exist as to Nigeria’s obligations under the African Charter is dispelled by reference to Article 1 of the Charter, which reads:

“The Member States...parties to the present Charter shall recognise the right, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.”

17. The African Commission has to express its approval of Nigeria’s original incorporation of the Charter, an incorporation that should set a standard for all Africa, and its sadness at the subsequent nullification of this incorporation. The Commission must emphasise, however, that the obligation of the Nigerian government to guarantee the right to be heard to its citizens still remains, unaffected by the purported revocation of domestic effect of the Charter. The Charter remains in force in Nigeria, and notwithstanding the Political Parties Dissolution Decree, the Nigerian government has the same obligations under the Charter. These obligations include guaranteeing the right to be heard.

FOR THE ABOVE REASONS, THE COMMISSION

1. holds that the Decrees in question constitute a breach of Article 7 of the Charter, the right to be heard
2. holds the ouster of the courts’ jurisdiction constitutes a breach of Article 26, the obligation to establish and protect the courts
3. finds the act of the Nigerian government to nullify the domestic effect of the Charter constitutes a serious irregularity.

Taken at the 17th Ordinary Session, Lomé, Togo, March 1995