

Rapporteur: 20th Session: Commissioner Dankwa
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Summary of Facts:

1. Between May and June 1995 the Nigerian police in the city of Owerri arrested Vincent Obidiozor Duru, Nnemeka Sydney Onyecheaghe, Patrick Okoroafor, Collins Ndulaka and Amanze Onuoha. They were accused of serious offences ranging from armed robbery to kidnapping.
2. The police completed its case and submitted a report on 25 July 1995. In this report the police linked the suspects to various robberies and kidnapping of young children which had occurred and for which ransoms were demanded. One of the kidnapped children escaped but the whereabouts of the others are still unknown, although the ransoms have been paid. The report concluded that the suspects should be detained under Decree No. 2 of 1984 (which permits detainees to be held for three months without charge) in order to permit further investigations and for the suspects to be charged with armed robbery and kidnapping. At present the suspects are imprisoned and no charges have been brought against them.

Complaint:

3. The communication alleges violations of Articles 6 and 7 of the Charter.

Procedure:

4. The communication is dated 5 February 1996 and was received at the Secretariat on 28 February 1996.
5. At the 20th session held in Grand Bay, Mauritius, in October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria. The mission was undertaken between 7 and 14 March 1997 and the report submitted to the Commission.
6. The parties were duly notified of all the procedures.

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Admissibility

7. *Prima facie*, the communication satisfies all of the requirements for admissibility contained in Article 56. The only question that might be raised is with regard to the exhaustion of local remedies required by Article 56(5). Article 56(5) requires that the complainants must have exhausted all available local remedies, or else prove that such remedies are unduly prolonged.
8. The very violation alleged in this case is that the victims are detained without charge or trial, thus constituting an arbitrary detention. The normal remedy in such instances is for the victims to bring an application for a writ of habeas corpus, a collateral action in which the court may order the police to produce an individual and justify his imprisonment.
9. However, the police report contained in the file recommends that the suspects be detained under Decree No. 2 of 1984 (Document Ref. No. CR:3000/IMS/Y/Vol. 33/172, p. 10 para.). By the State Security (Detention of Persons) Amended Decree No. 14 (1994), the government 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).
10. Thus, even the remedy of habeas corpus does not exist in this situation. There are consequently no remedies for the victims to resort to, and the communication was therefore declared admissible.

Merits

11. Article 6 of the African Charter reads:

...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.

12. The State Security (Detention of Persons) Act provides that the Chief of General Staff may order that a person be detained if he is

satisfied that any person is or recently has been concerned in acts prejudicial to State security or has contributed to the economic adversity of the nation, or in the preparation or instigation of such acts.

13. Persons may be detained indefinitely if the detention is reviewed every six weeks by a panel of nine persons, six of whom are appointed by the President, the other three being the Attorney-General, the Director of the Prison Service, and a representative appointed by the Inspector-General of Police. The panel does not have to agree that continued detention is necessary: the detention will be renewed unless the Panel is satisfied that the circumstances no longer require the continued detention of the person.

14. The detainees were arrested between May and June 1995, nearly two years ago. There is no evidence that they have been tried or even charged.
15. Even if the required reviews of detention as provided for by the Act, are being held, the Panel which conducts the review cannot be said to meet judicial standards as majority of its members are appointed by the President (the Executive) and the other three are also representatives of the executive branch. The Panel does not have to justify the continued detention of individuals, but only issue orders in the case of release.
16. This Panel cannot thus be considered impartial. Consequently, even if recommendations from the meetings of this Panel are responsible for the detainees' continued detention, this detention must be considered arbitrary, and therefore in violation of Article 6.
17. Furthermore, Article 7(1) of the Charter provides that every individual shall have the right to an appeal to competent national organs against acts violating his fundamental rights, and the right to be tried within a reasonable time by an impartial court or tribunal.
18. The meetings of the Review Panel cannot be considered a competent national organ. Since it appears that the right to file for habeas corpus is also closed to the accused individuals, they have been denied their rights under Article 7(1)(a).
19. A subsidiary issue is the length of time that has elapsed since their arrest. In a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimise the negative effects on the life of a person who, after all, may be innocent.
20. That nearly two years can pass without even charges being filed is an unreasonable delay. Thus, the detainees' rights under Article 7(1)(d) have also been violated.

For these reasons, the Commission,

finds violations of Articles 6, 7(1)(a) and (d) of the Charter

appeals to the Government of Nigeria to charge the detainees, or release them.

Done in Kigali, Rwanda on 15 November 1999