

206/97 Centre For Free Speech / Nigeria

Rapporteur:

23rd Session: Commissioner Dankwa

24th Session: Commissioner Dankwa

25th Session: Commissioner Dankwa

26th Session: Commissioner Dankwa

Summary of Facts:

1. The complainant alleges the unlawful arrest, detention, trial and conviction of four Nigerian journalists, by a Military Tribunal presided over by one Patrick Aziza.
2. The journalists were convicted for reporting stories on the alleged 1995 coup attempt in their various newspapers and magazines. The journalists are: Mr. George Mba of *TELL* magazine, Mr. Kunle Ajibade of *THE NEWS* magazine, Mr. Ben Charles Obi of *CLASSIQUE* Magazine and Mrs. Chris Anyanwu of *TSM* Magazine.
3. The journalists were tried in secret and were not allowed access to counsel of their choice.
4. The journalists were sentenced to various terms of imprisonment.
5. The convicted journalists could not appeal against their sentences because of the various Decrees promulgated by the Military Regime that ousts the jurisdiction of regular courts from hearing appeals on cases decided by a Military Tribunal.

Complaint:

The complainant asserts that the following Articles of the African Charter have been violated:

Articles 6, 7 and 24 and Principle 5 of the U. N. Basic Principles on the Independence of the Judiciary

Procedure:

6. The communication is dated 14 July 1997 and the Secretariat acknowledged receipt on 23 September 1997.
7. Correspondences were exchanged between the Secretariat and the parties for additional information and to keep the latter informed of the procedures.

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Admissibility

8. For a communication submitted under Article 55 of the Charter to be declared admissible, it must satisfy all the conditions stipulated under Article 56 of the Charter. Such conditions must be assessed based on the circumstances of each particular case. In this case, the communication *prima facie* is in accordance with these requirements. The only issue that might be raised is with regard to the exhaustion of local remedies as provided for under Article 56(5) of the Charter.
9. **Article 56(5) states:**

Communications relating to the human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

... are sent after exhausting local remedies if any, unless it is obvious that this procedure is unduly prolonged.

10. The jurisdiction of the courts are ousted by Treason and Treasonable Offences (Special Military Tribunal) Decree. Applying the decisions of the Commission in communication 60/91, which concerned the Robbery and Firearms Tribunal, communication 87/93 on the Civil Disturbances Tribunal, communication 101/92 on the Legal Practitioners Decree and communication 129/94 relating to the Constitution (Suspension and Modification) Decree and the Political Parties (Dissolution), the Commission finds that local remedies in the instant communication were non-existent or ineffective.

For the above reasons, the Commission declared the communication admissible.

Merits:

11. The complainant alleges the illegal arrest and detention of the Journalists as being in violation of their right to liberty and security of person as provided for in Article 6 of the Charter.

Article 6 of the Charter provides:

Every individual shall have the right to liberty and the security of person..

No One may be deprived of his freedom except for the reasons and conditions laid down by law. In particular, no one may be arbitrarily arrested or detained.

12. The complainant also alleges violation of Article 7 of the Charter and Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary in that the Journalists were tried in secret, were denied access to counsel of their choice and later sentenced to various terms of imprisonment. Further, that the convicted Journalists could not appeal against their sentences because of the various Decrees promulgated by the Military government that ousts the jurisdiction of the regular courts from hearing such cases.

Article 7 (1) of the Charter provides:

***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;***

Principle 5 of the UN Basic Principles stipulates:

***Everyone shall have the right to be tried by the ordinary courts or
tribunals using established legal procedures. Tribunals that do not
use the duly established procedures of the legal process shall not be
created to displace the jurisdiction belonging to the ordinary courts
or judicial tribunals.***

13. It is alleged that the convicted persons were not allowed access to their lawyers, neither were they given the opportunity to be represented and defended by lawyers of their own choice at the trial. Article 7 (1) (c) of the Charter provides:

***Every individual shall have the right to defence, including the right
to be defended by counsel of his choice.***

14. In its Resolution on the Right to Recourse Procedure and Fair Trial, the Commission in re-enforcing this right observed in paragraph 2 (e) (i) thus:

***In the determination of charges against individuals, the individual shall be
entitled in particular to:***

(i) ... communicate in confidence with counsel of their choice

The denial of this right therefore is in contravention of Article 7(1)(c) of the Charter.

15. The issue of the arraignment and trial of the Journalists must also be addressed here. The complainant alleges that the Journalists were arraigned, tried and convicted by a Special Military Tribunal, presided over by a serving military officer and whose membership also included some serving military officers. This is in violation of the provisions of Article 7 of the Charter and Principle 5 of the UN Basic Principles.
16. It could not be said that the trial and conviction of the four Journalists by a Special Military tribunal presided over by a serving military officer who is also a member of the PRC, the body empowered to confirm the sentence, took place under conditions which genuinely afforded the full guarantees of fair hearing as provided for in article 7 of the Charter. The above act is also in contravention of Article 26 of the Charter.

Article 26 of the Charter states:

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.

17. Unfortunately, the government of Nigeria has not responded to the several requests from the Commission for the former's reaction to the communication. The African Commission on several previous decisions has set out the principle that where allegations of human rights violations go uncontested by the government concerned, particularly after repeated notifications or request for information on the case, the Commission must decide on the facts provided by the complainant and treat those facts as given (see communications Nos. 59/91, 60/91, 64/91, 87/93 and 101/93).
18. In the circumstances, the Commission finds itself compelled to adopt the position that the facts alleged by the complainant are true.

For the above reasons, the Commission:

concludes that the violations of Articles 6 and 7 (1)(a) and (c) and 26 occurred in this case.

urges the government of Nigeria to order for the release of the four Journalists.

Done in Kigali, Rwanda on 15 November 1999