

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Seventeenth Ordinary Session
13-22 March 1995

**CONSTITUTIONAL RIGHTS PROJECT (IN RESPECT OF ZAMANI LAKWOT
AND 6 OTHERS)**

v.
NIGERIA

DECISION

BEFORE: CHAIRMAN: Prof. Isaac Nguema
VICE CHAIRMAN: Dr. Mohamed H. Ben Salem
COMMISSIONERS: Prof. Emmanuel V.O. Dankwa, Mr. Sourahata B. Semega
Janneh, Mr. Robert H. Kisanga, Dr. Vera V.B.S. Duarte-Martins, Dr. Ibrahim A.
Badawi El-Sheikh, Prof. U. Oji Umzurike, Mr. Atsu Koffi Amega.

Citation: Constitutional Rights Project v. Nig., Comm. 87/93, 8th ACHPR AAR Annex VI
(1994-1995)

Publications: IHRDA, Compilation of Decisions on Communications of the African
Commission On Human and Peoples' Rights Extracted from the Commission's
Activity Reports 1994-2001, at 197 (2002); Documents of the African Commission
on Human and Peoples' Rights, at 391(Malcolm D. Evans & Rachel Murray eds.,
2001); (2000) AHRLR 183 (ACHPR 1995)

THE FACTS

1. Communication 87/93 was brought on behalf of seven men - Zamani Lekwot, James Atomic Kude, Yohanna Karau Kibori, Marcus Mamman, Yahaya Duniya, Julius Sarki Zamman Dabo and Iliya Maza - sentenced to death under the Civil Disturbances (Special Tribunal) Decree No.2 of 1987 from Nigeria. This decree does not provide for any judicial appeal against the decisions of the special tribunals and prohibits the courts from reviewing any aspect of the operation of the tribunal.
2. The communication also alleges that the accused and their counsel were constantly harassed and intimidated during the trial, ultimately forcing the withdrawal of the defence counsel. Despite the lack of defense, the tribunal condemned the accused to death for culpable homicide, unlawful assembly and breach of the peace.

ARGUMENT

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals of judgments of these tribunals violates the right to an appeal to competent national organs against acts violating fundamental rights, guaranteed by Article 7, paragraph 1(a) of the African Charter.
4. The communication complains that the conduct of the trials before these tribunals, which included harassment of defense counsel, and deprivation of defense counsel, violated the right to be defended by counsel of one's choice, guaranteed by Article 7, paragraph 1(c).
5. The communication finally complains that the practice of setting up special tribunals, composed of members of the armed forces and police in addition to judges, violates the right to be tried by an impartial tribunal guaranteed by Article 7, paragraph 1 (d).

THE LAW

ADMISSIBILITY

6. The case was declared admissible at the 14th Session of the Commission on the following grounds:
7. The case raises the question of whether the remedies available are of a nature that requires exhaustion.
8. The Act complained of in Communication No. 87/93 is the Civil Disturbances (Special Tribunal) Act, in which Part IV, Section S(1) provides:

"The validity of any decision, sentence, judgment,... or order given or made,... or any other thing whatsoever done under this Act shall not be inquired into in any court of law."

9. The Civil Disturbances Act empowers the Armed Forces Ruling Council to confirm the penalties of the Tribunal.

This power is a discretionary, extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not vindicate a right. It would be improper to insist on the complainant seeking remedies from a source which does not operate impartially and has no obligation to decide according to legal principles. The remedy is neither adequate nor effective.

10. Therefore, the Commission is of the opinion that the remedy available is not of a nature that requires exhaustion according to Article 56, paragraph 5 of the African Charter.

THE MERITS OF THE CASE

11. The Civil Disturbances (Special Tribunal) Act, Part IV, Section 8(1) provides:

"The validity of any decision, sentence, judgment,... or order given or made,... or any other thing whatsoever done under this Act shall not be inquired into in any court of law."

12. A "decision, sentence, judgment... order given or made... or any other thing whatsoever done under" the Civil Disturbances Act may certainly constitute an "Act violating fundamental rights in question are those to life and liberty provided for in Articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to "competent national organs" in criminal cases bearing such Charter, and increases the risk that even severe violations may go unredressed.
13. The communication alleges that during the trials the defense counsel for the complainants was harassed and intimidated to the extent of being forced to withdraw from the proceedings. In spite of this forced withdrawal of counsel, the tribunal proceeded to give judgment in the matter, finally sentencing the accused to death. The Commission finds that defendants were deprived of their right to defense, including the right to be defended by counsel of their choice, violation of Article 7.1 (c) as cited above.
14. The Civil Disturbances (Special Tribunal) Act, Part II, Section 2 (2) says that the tribunal shall consist of one judge and four members of the Armed Forces. As such, the tribunal is composed of persons belonging largely to the executive branch of government, the same branch that passed the Civil Disturbances Act.

Article 7.1 (d) of the African Charter requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack of impartiality. It thus violates Article 7.1 (d).

FOR THE ABOVE REASONS, THE COMMISSION declares that there has been a violation of Article 7(a), (c) and (d) of the African Charter; and recommends that the Government of Nigeria should free the complaints.

At the 17th Session the Commission decided to bring the file to Nigeria for a planned mission in order to make sure that the violations have been repaired.