

Rapporteur: 19th Session: Commissioner Dankwa
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Summary of Facts:

1. The communication concerns 11 soldiers of the Nigerian army: WO1 Samson Elo, WO2 Jomu James, Ex. WO2 David Umukoro, Sat. Gartue Ortoo, LCPI Pullen Blacky, Ex LCPI Lucky Iviero, PVT Fakolade Taiwo, PVT Adelabi Ojejide, PVT Chris Miebi, Ex PVT Otem Anang, and WO2 Austin Ogbeowe. They were arrested in April 1990 on suspicion of being part of a coup plot and were tried twice, once in 1990 and once in 1991. They were found innocent on both occasions but still have not been freed. On 31 October 1991 they were granted state pardon by the then-Armed Forces Ruling Council. However, they continue to be held at Kirikiri Prison under terrible conditions. The complaint argues that there are no further domestic remedies available, since the jurisdiction of the courts over the matter has now been ousted by military decree.

Complaint:

2. The communication alleges violation of Article 6 of the Charter.

Procedure:

3. The communication is dated 22 August 1995 and was received at the Secretariat on 18 September 1995.

4. At the 20th session held in Grand Bay, Mauritius, 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 was submitted to the Commission.

5. The parties were kept informed of all the procedures.

LAW

Admissibility

6. Article 56 of the Charter reads:
"Communications... shall be considered if they:

...

(5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged."

7. This is just one of the seven conditions specified by Article 56, but it is the one that usually requires the most attention. Because Article 56 is necessarily the first considered by the Commission, before any substantive consideration of communications, it has already been the subject of substantial interpretation; in the jurisprudence of the African Commission, there are several important precedents.

8. Specifically, in the four decisions the Commission has already taken concerning Nigeria, Article 56 (5) is analysed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Robbery and Firearms Tribunal; Communication 87/93 (Decision ACHPR/87/93) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101/93) concerned the Legal Practitioners Decree; and Communication 129/94 (ACHPR/129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.

9. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22). The Legal Practitioners Decree specifies that it cannot not be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Suspension and Modification legal prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).

10. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent or ineffective. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos Division have occasionally found that they have jurisdiction. For instance, in 1995 the Court of Appeal, Lagos Division, relying on common law, concluded that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality". But this decision has not been followed by any subsequent case.

11. In the instant communication, the jurisdiction of the courts was ousted. Thus, no matter how meritorious the victims' case for freedom may be, it cannot be entertained by the courts. Accordingly, the case was declared admissible.

Merits

12. Article 6 of the African Charter provides:

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

13. The government has not disputed any of the facts as presented by Constitutional Rights Project.

14. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuses go uncontested by the government concerned, especially after repeated notification, the Commission must decide on the facts provided by the complainant and treat those facts as given¹.

15. As the government has offered no other explanation for the detention of the 11 soldiers, the Commission has to assume that they are still being detained for the acts for which they were found innocent in two previous trials. This is a clear violation of Article 6, and shows disrespect by the Nigerian government for the judgements of its own courts.

16. Later, (although it was unnecessary because they were found innocent of any crime), the soldiers were granted state pardons, but still not freed. This constitutes a further violation of Article 6 of the Charter.

For these reasons, the Commission

finds that Article 6 of the African Charter has been violated

urges the Government of Nigeria to respect the judgements of its courts and free the 11 soldiers.

Done in Kigali, Rwanda on 15 November 1999

¹ See the Commission's decisions on *communications 59/91- Embga Mekong Louis vs. Cameroon*, *60/91- Constitutional Rights Project vs. Nigeria (in respect of Wahab Akamu, G. Adeg and oers*, *64/91 - Krishna Achuthan (on behalf of Aleke Banda)*, *87/93- Constitutional Rights Project vs. Nigeria (in respect of Zamani Lekwot and 6 oers) vs. Nigeria and 101/93 - Civil Liberties Organisation (in respect of the Nigerian Bar Association) vs. Nigeria*

