

60/91 Constitutional Rights Project v. Nigeria, (in respect of Wahab Akamu, G. Adega and others.)

THE FACTS

1. Communication 60/91 was brought by the Constitutional Rights Project, a Nigerian NGO, on behalf of Wahab Akamu, Gbolahan Adega and others sentenced to death under the Robbery and Firearms (Special provision) Decree No. 5 of 1984. This decree creates special tribunals, composed of one serving or retired judge, one member of the armed forces and one member of the police force. The decree does not provide for any judicial appeal of sentences. Sentences are subject to confirmation or disallowance by the Governor of a State.

2. Wahab Akamu was convicted and sentenced to death on August 12, 1991, and Gbolahan Adega was convicted and sentenced on August 14, 1991. Both were sentenced by Robbery and Firearms Tribunal 1, Lagos. The complaint alleges that both were tortured to extract confessions while they were in custody.

ARGUMENT

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals for 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 also argues 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

5. The case was declared admissible at the 14th Session of the Commission on the following grounds:

6. The case raises the question of whether the remedies available are of a nature that requires exhaustion.

7. The Act complained of in Communication No. 60/91 is The Robbery and Firearms (Special Provisions) Act, Chapter 398, in which Section 11, paragraph 4 provides:

"No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation or dismissal of such decision by the Governor."

8. The Robbery and Firearms Act entitles the Governor to confirm or disallow the conviction of the Special Tribunal.

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

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

The merits of the case

10. The Robbery and Firearms (Special Provisions) Act, Section 11, subsection 4 provides:
"No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation or dismissal of such decision by the Governor."

11. A "decision of a tribunal constituted under this Act or..any confirmation or dismissal of such decision by the Governor" may certainly constitute an "act violating fundamental rights" as described in Article 7.1(a) of the Charter. In this case, the 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 penalties clearly violates Article 7.1(a) of the African Charter, and increases the risk that severe violations may go unredressed.

12. The Robbery and Firearms (Special Provision) Act, Section 8(1), describes the constitution of the tribunals, which shall consist of three persons; one Judge, one officer of the Army, Navy or Air Force and one officer of the Police Force. Jurisdiction has thus been transferred from the normal courts to a tribunal chiefly composed of persons belonging to the executive branch of government, the same branch that passed the Robbery and Firearms Decree, whose members do not necessarily possess any legal expertise. Article 7.1(d) of the African Charters 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 complainants.

At the 17th session the Commission decided to bring the file to Nigeria for the planned mission in order to verify that the violations have been released