

**87/93 The Constitutional Rights Project (in respect of Zamani Lakwot and 6 Others)
v. Nigeria**

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 defense 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 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 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 ones 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 rises 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 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."

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 to vindicate a right. It would be improper to insist on the complainant seeking remedies from a source which does not operate impartially and have 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" 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 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 Disturbance (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 Disturbance Act.

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 a planned mission in order to make sure that the violations have been repaired.