

Rapporteur: 20th Session: Commissioner Kisanga
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
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Summary of Facts:

1. In March 1995, the Federal Military Government of Nigeria announced that it had discovered a plot to overthrow it by force. By the end of the month, several persons including civilians and serving and retired military personnel had been arrested in connection with the alleged plot.
2. A Special Military Tribunal was established under the Treason and Teasonable Offences (Special Military Tribunal) Decree, which precluded the jurisdiction of the ordinary courts. The Military Tribunal was headed by Major-General Aziza, and composed of five serving military officers. The tribunal used the rules and procedures of a Court-Martial, and no appeal lay from its judgement. The tribunal's decision was only subject to confirmation by the Provisional Ruling Council, the highest decision making body of the military government.
3. The trials were conducted in secret, and the suspects were not given the opportunity to state their defence or have access to lawyers or their families. They were not made aware of the charges against them until their trial. The suspects were defended by military lawyers who were appointed by the Federal Military Government.
4. Thirteen civilians tried by the Tribunal were convicted for being accessories to treason and sentenced to life imprisonment. These were: Dr. Beko Ransome-Kuti, Mallan Shehu Sanni, Mr. Ben Charles Obi, Mrs. Chris Anyanwu, Mr. George Mba, Mr. Kunle Ajibade, Alhaji Sanusi Mato, Mr. Julius Badejo, Mr. Matthew Popoola, Mr. Felix Mdamagida, Miss Rebecca Onyabi Ikpe, and Mr. Moses Ayegba. Miss Queenette Lewis Alagoe was convicted as an accessory after the fact and sentenced to 6 months imprisonment. The life sentences were later reduced to 15 years imprisonment.
5. The communication alleges that since their arrest, the accused have been held under inhuman and degrading conditions. They are held in military detention places, not in the regular prisons, and are still deprived of access to their lawyers and families. They are held in dark cells, given insufficient food and no medicine or medical attention.

Complaint:

6. The complainant alleges violations of Articles 5, 7(1)(a), (c) and (d) and 26 of the African Charter.

Procedure:

7. The communication is dated 19 January 1996 and was received at the Secretariat on 29 January 1996.
8. At the 20th session held in Grand Bay, Mauritius October 1996, 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 took place between 7 and 14 March 1997 and the report was submitted to the Commission.
9. The parties were kept informed of all the procedures.

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Admissibility

10. 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.

11. 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 to be 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.

12. Specifically, in 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.

13. 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 be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution

Modification and Suspension prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).

14. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illegal. 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 district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality".

15. In the instant communication, the jurisdiction of the ordinary courts was ousted and the case against the accused persons was brought before a special tribunal. From this tribunal there is no appeal to the ordinary courts.

16. Thus, as dictated both by the available facts and the precedent of the African Commission, the communication was declared admissible.

Merits

17. In all of the above-cited cases, the ouster clauses in addition to being prima facie evidence of admissibility, were found to constitute violations of Article 7. The Commission must take this opportunity, not only to reiterate the conclusions made before, that the constitution and procedures of the special tribunals violate Articles 7 (1)(a) and (c) and 26, but to recommend an end to the practice of removing entire areas of law from the jurisdiction of the ordinary courts.

18. In oral statements before the Commission, the Nigerian Government has claimed that "as a developing nation, we do not have enough resources to man these law courts very well." (Examination of State Reports, 13th Session, April 1993, Nigeria-Togo, p.35) This was given as a justification of "special" tribunals. Another justification given was that a breakdown of law and order had caused a high volume of cases (Id. pp. 37 and 39)

19. The Government denied that there is anything special at all about these extraordinarily constituted courts and maintained that they respected all the procedures of the regular courts; however, the government did concede that they include military officers, and that from the special tribunals there is no means of appeal to the regular courts.

20. Although the government argues that the procedure before special tribunals offers the same protections for rights as the regular courts (See Id. at 38), this assertion is belied by the very reasons the government gives for the tribunals, as well as the evidence submitted by the complainants.

21. The Commission's previous decisions found that the special tribunals violated the Charter because their judges were specially appointed for each case by the executive branch, and would include on the panel at least one, and often a majority, of military or law

enforcement officers, in addition to a sitting or retired judge. The Commission here reiterates its previous decisions and declares that the trial of these persons before a special tribunal violates Article 7(1)(d) and Article 26.

22. The system of executive confirmation, as opposed to appeal, provided for in the institution of special tribunals, violates Article 7(1)(a).

23. If the domestic courts are overburdened, which the Commission does not doubt, the Commission recommends that Government consider allocating more resources to them. The setting up of a parallel system has the danger of undermining the court system and creates the likelihood of unequal application of the laws.

24. The complainants have alleged that the accused were not permitted to choose their own counsel. This is a question of fact. The government has not responded to this case specifically, neither has it contradicted this accusation. Therefore, in accordance with its established practice, (See the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93) the Commission must take the word of the complainant as proven and thus finds a violation of Article 7(1)(c).

25. Finally, the complaint alleges that the conditions of detention of the convicted persons constitute inhuman and degrading treatment, in violation of Article 5. The government has not made any specific response to any of the accusations in the communication, and has not provided any information to contradict the allegations of inhuman and degrading treatment.

26. While being held in a military detention camp is not necessarily inhuman, there is the obvious danger that normal safeguards on the treatment of prisoners will be lacking. Being deprived of access to one's lawyer, even after trial and conviction, is a violation of Article 7(1)(c).

27. Being deprived of the right to see one's family is a psychological trauma difficult to justify, and may constitute inhuman treatment. Deprivation of light, insufficient food and lack of access to medicine or medical care also constitute violations of Article 5.

For the above reasons, the Commission

finds a violation of Articles 5, 7(1)(a), (c) and (d) and 26.

appeals to the Government of Nigeria to permit the accused persons a civil re-trial with full access to lawyers of their choice; and improve their conditions of detention.

Done in Kigali, Rwanda on 15 November 1999

