

Rapporteur:

25th Session: Commissioner Dankwa

26th Session: Commissioner Dankwa

27th Session: Commissioner Dankwa

28th Session: Commissioner Dankwa

Summary of Facts:

1. The complaint is submitted by the Forum of Conscience, a Sierra Leonian Human Rights NGO on behalf of 24 soldiers who were executed on 19th October 1998 in Freetown, Sierra Leone.
2. The Complainant alleges that the 24 soldiers were tried and sentenced to death by a Court Martial for their alleged roles in the coup that overthrew the elected Government of President Tijan Kabah.
3. The communication alleges further that the trial of the soldiers by the Court Martial was flawed in law and in violation of Sierra Leone's obligation under the African Charter.
4. It is also alleged that the Court Martial which tried and convicted the above mentioned victims allowed no right of appeal against conviction or sentence to a higher tribunal and therefore in breach of Article 7(1) of the African Charter on Human and Peoples' Rights.
5. The Complainant contends that the public execution of the 24 soldiers on 19th October 1998 after being denied right of appeal to a higher tribunal also amounts to an arbitrary deprivation of the right to life contrary to Article 4 of the African Charter.

Complaint:

The Complainant alleges violation of articles 1, 4 and 7 (1) (a) and 7(1)(d) of the African Charter.

Procedure:

6. The communication was received at the Secretariat on 24th October 1998.
7. At its 25th ordinary session held in Bujumbura, Burundi, the Commission postponed consideration of the communication to its 26th ordinary session.
8. On 11th May 1999, the Secretariat of the Commission notified the parties of this decision.
9. At its 26th ordinary session held in Kigali, Rwanda, the Commission decided to be seized of this communication.

10. Between 14th and 19th February 2000 when the Commission's delegation visited Sierra Leone on a promotional mission, the subject of the complaint was taken up with relevant government officials, including the Attorney General of Sierra Leone.
11. On 2nd March 2000, the Secretariat of the Commission informed the parties of the decision taken by the Commission at its 26th ordinary session.
12. At its 27th ordinary session held in Algeria, the Commission examined the case and declared it admissible. It requested the parties to furnish it with arguments on the merits of the case.
13. The above decision was communicated to the parties on 12th July 2000.

LAW

Admissibility

14. The Commission takes note of the fact that the complaint was filed on behalf of people who were already executed. In this regard, the Commission held that there were no local remedies for the Complainant to exhaust. Further that even if such possibility had existed, the execution of the victims had completely foreclosed such a remedy.

Merits:

15. The Complainant alleges that the decision of the court-martial is not subject to appeal and is therefore a violation of the victims' rights to fair trial.
16. The facts as submitted by the Complainant disclose that the 24 soldiers were executed publicly after being deprived of the right of appeal to a higher tribunal. In its Resolution on the Right to Fair Trial and Legal Assistance in Africa, the Commission had, in adopting the Dakar Declaration and Recommendations, noted thus:
"In many African countries Military Courts and Special Tribunals exist alongside regular judicial institutions. The purpose of Military Courts is to determine offences of a purely military nature committed by military personnel. While exercising this function, Military Courts are required to respect fair trial standards."
17. The Commission notes that the trial in issue was that of a purely military nature, i.e. for their alleged roles in the coup which overthrew the elected Government. The Commission is however constrained to hold that the denial of the victim's right of appeal to competent national organs in a serious offence as this falls short of the requirement of the respect for fair trial standards expected of such courts. The execution of the 24 soldiers without the right of appeal is therefore a violation of article 7(1)(a) of the Charter. This is more serious given the fact that the said violation is irreversible.

Article 7(1)(a) of the Charter states:

An individual shall have... the right to appeal to competent national organs against acts violating his fundamental rights...

18. The Complainant alleges a violation of **Article 4** of the African Charter on Human and Peoples' Rights which provides that:

Human beings are inviolable. Every human being shall be entitled to respect for his life... No one may be arbitrarily deprived of this right.

19. The right to life is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life. Having found above that the trial of the 24 soldiers constituted a breach of due process of law as guaranteed under Article 7(1)(a) of the Charter, the Commission consequently finds their execution an arbitrary deprivation of their rights to life provided for in Article 4 of the Charter.

Although this process cannot bring the victims back to life, it does not exonerate the government of Sierra Leone from its obligations under the Charter.

20. The Commission notes the failure of the competent authorities of the Republic of Sierra Leone to respond to its request for additional information and arguments on the admissibility and merits of the case. It is noted that the Minister of Justice and Attorney General explained to the Commission's mission referred to above that the regulations of the military did not allow for the right of appeal. However, before the Commission, the African Charter is the yardstick for determining violations. The rules and regulations governing court martial, to the extent that they do not allow the right of appeal offend the Charter. But it is noted with satisfaction that the law has been amended, subsequent to the mission to Sierra Leone, to bring it into conformity with the Charter.

For the above reasons, the Commission:

Finds the Government of Sierra Leone in violation of Articles 4 and 7(1)(a) of the African Charter on Human and Peoples' Rights.

**Done at the 28th Ordinary Session held in Cotonou, Benin
from 23rd October to 6th November 2000**