

148/96 : Constitutional Rights Project / Nigeria

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 Ogbewe. 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 31st October 1991, the then-Armed Forces Ruling Council granted them state pardon. 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 a violation of [Article 6](#) of the Charter.

Procedure

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

4. The Commission declared the communication admissible at the 20th session held in Grand Bay, Mauritius, and decided that the planned mission to Nigeria should take it up with the relevant authorities. The mission was undertaken between 7th and 14th 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: ... [Article 56\(5\)](#) 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[sic]¹ and ACHPR/87/93:22 [sic]²). The Legal Practitioners Decree specifies that it may not be challenged in the courts and that anyone attempting to do so commits a crime ([ACHPR/101/93:14](#) and [15](#)). The Constitution (Modification and Suspension) Decree prohibited their challenge in the Nigerian Courts [ACHPR/129/94:14](#) and [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, the courts cannot entertain it. 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 were still not freed. This constitutes a further violation of [Article 6](#) of the Charter.

Decision of the African Commission

For these reasons, the Commission

Holds a violation of [Article 6](#) of the African Charter

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

Kigali, Rwanda, 15th November 1999.

Footnotes

1. **Editor's note:** [Decision 60/91](#) has only 14 paragraphs in English and in French. For further information see [ACHPR/60/91:13](#)

1. See the Commission's decisions on communications 59/91 - [Embga Mekong Louis/Cameroon](#), 60/91 - [Constitutional Rights Project\(in respect of Wahab Akamu, G. Adegas and others /Nigeria](#), 64/92 - [Krishna Achutan \(on behalf of Aleke Banda\)/Malawi](#), 87/93 - [Constitutional Rights Project/Nigeria \(in respect of Zamani Lakwot and 6 others \)/ Nigeria](#) and 101/93 - [Civil Liberties Organisation \(in respect of the Nigerian Bar Association\)/Nigeria](#).

2. **Editor's note:** [Decision 87/93](#) has only 14 paragraphs in English and in French. For further information see [ACHPR/87/93:11](#)