



## International Pen and Others. on Behalf of Saro Wiwa v. Nigeria

AHRLR 212 (ACHPR 1998); Communications 137/94, 139/94, 154/96 and 161/97

**Country:** Nigeria

**Region:** Africa

**Year:** 1998

**Court:** African Commission on Human and Peoples' Rights African Commission on Human and Peoples' Rights

**Health Topics:** Health care and health services, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Freedom of association, Freedom of expression, Right of access to information, Right to acquire nationality, Right to due process/fair trial, Right to health, Right to liberty and security of person, Right to life

### Facts

S, a writer and president of an Ogoni people's movement, and L (the movement's vice-president) were arrested in May 1994 after the murder of four Ogoni leaders following a riot which had occurred during a meeting organized by the movement. It was alleged that S was severely beaten during the first days of his detention and was held for several days in leg irons and handcuffs. In addition it was claimed that he was denied access to a lawyer and the medicine which he needed to control his blood pressure, as well as prevented at times from seeing his family and held in very poor conditions. S had previously been detained five times for brief periods since the beginning of 1993 and had been released each time without charge, except on one occasion when he had been held for several weeks and charged with unlawful assembly. Sixteen other Ogonis were also said by September 1994 to have already been held without charge or bail for over three months.

The state military administrator declared that S and his co-defendants had incited members of the movement to murder four rival Ogoni leaders but no charges were brought until January 1995. The defendants were all arrested and kept in detention under a decree which allowed the government to detain someone without charge for as long as three months in the first instance. This decree barred the courts from questioning any such detention or in any way intervening on behalf of detainees. The defendants were not allowed to meet with their lawyers between their arrest and the beginning of the trial and no information on the charges was provided to the defense. It was alleged that they were all kept manacled in their cells, beaten and chained to the walls.

The trial of the defendants began in February 1995 before a tribunal whose members were appointed directly by the head of state, despite it being argued that the case was within the exclusive jurisdiction of the state court where the offenses occurred. The tribunal was presided over by an appeal court judge and it had three members rather than the five required by the relevant law. It was alleged that there were irregularities in the conduct of the trial itself, namely, harassment of defense lawyers, denial of legal representation by a lawyer of the defendants' choice after the harassment had led those both lawyers and others assigned by the tribunal to withdraw, the presence of a military officer at what should have been confidential meetings between defendants and the lawyers, no time or facilities to prepare the defense, no presumption of innocence, bribery of witnesses, evidence of bias and lack of independence on the part of the tribunal members themselves, no right of appeal and being held incommunicado after sentencing. In October 1995 S and eight of the co-defendants were sentenced to death while six others (including L) were acquitted.

The Commission invoked interim measures calling for the executions to be delayed until the case had been discussed with the Nigerian authorities. There was no response to this appeal and the sentences, after being confirmed by the provisional ruling council, were carried out in November 1995 in secret. The confirmation had taken place in breach of the decree under which the defendants were executed since the council had not received the records of the trial tribunal, these not having been prepared by it. It was also alleged that the condemned persons had been detained arbitrarily prior to and during the trial and that they had been subjected to torture. In addition, it was claimed that they had been tried, convicted and sentenced to death for the peaceful expression of their views and opinions on the violations of the rights of the Ogoni people. Furthermore, the decree under which they were executed was said to be invalid because it was made without

the participation of the people.

The communications complained about breaches of Arts 1, 4, 5, 7, 9, 10, 11, 16 and 26. Nigeria maintained that (a) its actions were necessary to protect the rights of the citizens who were murdered, (b) the tribunal was competent because two of its members were lawyers, (c) the process of confirmation was an adequate appeal, (d) the decree had not been protested since its enactment and (e) it had been set up to deal with a crisis situation.

&nbsp;

[Adapted from the INTERIGHTS summary, with permission]

## Decision and Reasoning

The Commission held:

- (1) that, in the light of the fact that the subjects of the communications were now deceased, it was evident that no domestic remedy could now give the complainants the satisfaction which they sought and the communications were, therefore, admissible;
- (2) that, as the allegations concerning the use of leg irons, manacle and handcuffs and the ill-treatment (including beatings, being held in airless and dirty cells and being denied medical attention) had not been challenged, there was a violation of Art 5;
- (3) that, as the decree under which the victims were held allowed the government arbitrarily to hold people critical of it for up to three months without having to explain itself and without any opportunity for the arrest and detention to be challenged before a court, it prima facie violated the right not be arbitrarily arrested or detained;
- (4) that, as no defense of this decree had been made (either in general or as applied in this case), there was a violation of Art 6;
- (5) that removing cases from the jurisdiction of the ordinary courts and placing them before an extension of the executive branch necessarily compromised their impartiality, regardless of the qualifications of the individuals chosen for a particular tribunal;
- (6) that, although there was a great deal of information on the day-to-day conduct of the tribunal and the significance of its ruling, it was only necessary to rely upon the holding in Constitutional Rights Project (in respect of Akamu, Adegba and Others) v Nigeria ((1996) 10 Interights Bulletin 18) in finding that these special tribunals denied K and his co-defendants a fair trial and there was, therefore, a violation of Art 7(1)(d);
- (7) that, as it was not safe to regard the provisional ruling council as impartial or independent and as the decree ousted all possibility of appeal to the ordinary courts, the accused had no possibility of appeal to a competent national organ and there was a violation of Art 7(1)(a);
- (8) that, as the tribunal and the provisional ruling council were not independent, there was also a violation of Art 26;
- (9) that, although the tribunal admitted that there was no direct evidence linking the accused to the murders but held that they had failed to establish that they had not committed the crime alleged and as government representatives had pronounced both the movement and the accused guilty at various press conferences and before the United Nations, there was a violation of the right to be presumed innocent under Art 7(1)(b);
- (10) that, as the government did not dispute the allegation that two different defense teams were harassed into quitting the defense of the accused but merely attributed malicious motives to the defense, there was no alternative but to conclude that there was a violation of Art 7(1)(c);
- (11) that, given that the trial which ordered the executions itself violated Art 7, any subsequent implementation of sentences rendered the resulting deprivation of life arbitrary and in violation of Art 4;
- (12) that this violation was compounded by the fact that there were pending communications at the time of the execution and the government had been requested to avoid causing any irreparable prejudice to the subjects of them before consideration had concluded;
- (13) that, as at least one of the victims's™ lives was seriously endangered by the denial of medication during detention and as the right to life also included a duty not to purposefully let a person die while in custody, there were multiple violations of Art 4;
- (14) that it appeared that the tribunal held the accused responsible for the murders because they had organized the rally after which the murders took place but K for one was prevented by government officials from attending it and there was considerable difficulty with this position since it could adversely affect the right of assembly;
- (15) that there was, therefore, a violation of Art 11;
- (16) that there was clear prejudice against the movement both by the tribunal holding the condemned persons, through their membership of it, to be responsible for the murders and by the government officials declaring them guilty without waiting for the official judgment;

(17) that there was, therefore, a violation of Art 10(1);

(18) that the government, which had already been shown to be highly prejudiced against the movement, had not contradicted the allegation that the actual reason for the trial and the ultimate death sentences was the peaceful expression of views by the accused and the government's actions were, therefore, a violation of Art 9(2) which was implicit when it violated Arts 10(1) and 11;

(19) that, as the responsibility for health was heightened in cases where an individual was in custody and as the government had not denied the allegation that the denial of requests for hospital treatment made by a qualified prison doctor for K had caused his health to suffer to the point where his life was endangered, there was a violation of Art 16; and

(20) that it was an understatement to find that the carrying out of the execution in the face of pleas to the contrary was a violation of the AfCHPR.

&nbsp;

[Adapted from the INTERIGHTS summary, with permission]

### **Decision Excerpts**

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)