

A BRIEF on
The HUMAN RIGHTS SITUATION
in AFRICA

submitted to the

28th SUMMIT of the
ORGANISATION OF AFRICAN UNITY
(OAU)

Dakar, Senegal

29 June - 1 July 1992

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I. Introduction

In the past forty years, the International Commission of Jurists has been working for the promotion of the Rule of Law and the legal protection of human rights throughout the world. In Africa, the ICJ Conference on the Rule of Law, which was held in Lagos, Nigeria in 1961, set the stage for the ICJ's sustained efforts for the improvement of human rights in Africa and culminated in the adoption of the African Charter on Human and Peoples' Rights by the OAU Summit in 1981 and subsequent to the Charter's entry into force in 1986, the establishment of the African Commission in 1987. The ICJ has given support to the African Commission on Human and Peoples' Rights. In the past nine months, the ICJ has organized two workshops on NGO participation in the African Commission. The ICJ also has planned other activities for the future to strengthen the role of the Commission.

Since the ICJ is committed to the Rule of Law and legal protection of human rights, the ICJ is pleased with a number of developments in Africa in the past few years. The apparent waive of democratization as seen in Benin and Zambia is a noteworthy indication that political pluralism and free and fair elections are not alien to Africa. The transitions to civilian rule scheduled for 1993 in Ghana and Nigeria, two countries plagued in the past by military intervention, are hopeful examples of positive change. In addition, African countries, as member states of the OAU, have pledged in the preamble to the OAU Charter "to promote international cooperation, having due regard for the Charter of the United Nations and the Universal Declaration of Human Rights." Also worth noting is that forty-three of the fifty-one African states have ratified the African Charter on Human and Peoples' Rights. Although only a few African states have submitted their periodic reports to the Commission, the ICJ is encouraged by indications that other states will do so in the near future. It is also our hope that the eight States which have not as yet ratified the African Charter will do so as soon as possible.

Despite these innovations, however, legal protection of human rights remains inadequate in Africa, exemplified by recent human rights

violations in many African states. The ICJ is deeply concerned about the continuing violations. The OAU Summit in conjunction with the African Commission has a responsibility to address these violations and to assure that African countries respect their legal obligations under the African Charter on Human and Peoples' Rights and the UN Charter and other relevant international instruments.

Specific human rights violations are of particular concern to the ICJ due to their severity of harm and their frequency of occurrence throughout Africa. These include: killings and lack of accountability, arbitrary detention, torture, lack of personal protection and arbitrary use of power due to the lack of an independent judiciary, lack of protection of civilians during armed conflict and deportation.

The examples of violations used in the following legal analysis are based on international and local sources. While some changes may have occurred that are not indicated in this brief, examples are meant to illustrate potential consequences when the law is inadequate to protect human rights.

II. Inadequate Protection of Human Rights

Article 1 of the African Charter on Human and Peoples' Rights: The Member States of the Organization of African Unity parties to the present Charter shall recognize rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

According to Article 1 of the African Charter on Human and Peoples' Rights, state parties to the Charter have the duty to protect the rights, duties and freedoms enshrined in the Charter. Despite this legal duty, many state parties fail to provide adequate protection. In some African states, laws directly contradict rights protected in the Charter. In other African states, the extent of protection provided in the laws is inadequate or abused without recourse. And yet in other African states, no relevant law exists to protect human rights provided for by the African Charter on Human and Peoples' Rights.

A. Killings and Lack of Accountability

Article 4 of the African Charter on Human and Peoples' Rights: Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.

In **Ghana**, between 1983 and 1986, 50 political prisoners were sentenced to death; the government has executed at least 23 of the 50.

In **Rwanda** since 1990, the government has extrajudicially executed more than 1,000 people belonging to the Tutsi minority.

In **Togo**, government soldiers are notorious for operating a "shoot-to-kill" policy. In 1991, 28 bodies of demonstrators were found near Lome'. The people allegedly were killed by soldiers and, as of April of 1992, no action had been taken by the government to charge those responsible for the killing.

B. Arbitrary Detention:

Article 6 of the African Charter on Human and Peoples' Rights: Every individual shall have the right to liberty and 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.

In **Malawi**, the Public Security Regulation of 1965 empowers the head of government to detain persons indefinitely without charge or trial. Although Malawi released 87 detainees in 1990-1991 and released additional detainees in 1992, many uncharged prisoners and other uncharged detainees are still being held.

In **Nigeria**, although the government claims to be committed to the Rule of Law and to the transition to a civilian government, the prevalence of administrative decrees makes dubious this claim. State Security Decree No. 2 of 1984 authorizes administrative detention which empowers the government to order detention for an indefinitely renewable period of six weeks. Although the detention is supposed to be limited to situations related to state security or the national economy, the detentions under Decree No. 2 have not been limited to these areas. The Civil Liberties Organization reports that thousands have been detained under Decree No. 2. Recent examples include: Femi Falana, the Chairman of the National Association of Democratic Lawyers and a member of the Committee for the Defence of Human Rights, who was arrested without charge or trial on May 19, 1992; and at least eight relatives of men suspected to be involved in the 1990 coup attempt who were detained without charge or trial as of October of 1991.

In **Ghana**, the Preventive Custody Law empowers the government to detain any person indefinitely without charge or trial who is suspected of threatening the security of the state. Ghana's

government has used this law to silence and intimidate opponents. Once detained on administrative order, detainees have no recourse in the law: the right to habeas corpus was abolished by a 1984 decree. In the past ten years, hundreds of people have been imprisoned because they are opponents of the government. At least 50 people are currently being detained in Ghanaian jails without charge or trial. Recently the government detained John Akparibo Ndebugre and Kwesi Armah, both lawyers and former government ministers, and held them without charge or trial since December, 1991 and October, 1991 respectively. The government released Ndebugre but is still holding Kwesi Armah.

In Kenya, the Preservation of Public Security Act allows arrest without charge and provides no safeguard to assure a fair trial. As of July, 1991, at least four Amnesty International prisoners of conscience who received unfair trials and over twenty political prisoners who received unfair trials are still being detained. The four prisoners of conscience are: George Anyona, a former member of parliament; Edward Oyugi, a former professor of educational psychology; Augustine Kathangu, a dissident official of the ruling party; and Ngotho Kariuki, a former university dean. The four were found guilty of sedition and jailed, despite the apparent non-existence of incriminating evidence. Of the twenty political prisoners, Koigi wa Wamwere, a former political activist, and lawyers Rumba Kinutha and Mirugi Kariuki, all claim to have been tortured and forced to make false incriminating statements.

In the Sudan, Section 7 of Decree 2, passed by the National Salvation Revolutionary Command Council (NSRCC) in 1989, permits the authorities to arrest and detain anyone suspected of being a danger to economic or political security and does not provide due process protections. Detention in secret centers known as "ghost houses" are the Sudan government's routine reaction to dissent. Despite the government's claim that it released all political prisoners in 1991, the government is still detaining approximately sixty long-term political prisoners. Additionally, in August of 1991 military intelligence detained at least forty-four Nuba men because of suspicion that the men were supporters of the SPLA. No less than thirty-seven of the forty-four Nuba men have "disappeared." Most recently, government authorities re-arrested and detained without charge or trial lawyers Adnan Zahir and Kamal al-Gizouli.

In the Ivory Coast, although the law requires that in order to detain a person the government must charge the arrested person within two days of the arrest, the government repeatedly does not abide by this law. Recently the government arrested twenty trade unionists, politicians and human rights leaders (including the main opposition leader, Laurent Ghagbo) and failed to charge them within two days.

Despite this shortcoming, a trial against the twenty is proceeding. The twenty are accused of inciting a riot, even though reports indicate that none of the accused were seen being destructive. The government has unlawfully detained as many as one-hundred others within the past few months, including Adou Jean-Francois, Aka Kouassi, Akassi Thomas, Kalifa Toure, Quattara Lancina and Teha Emmanuel.

In **Zaire**, even though by law the political police, known as the National Documentation Centre (CND), is entitled to hold suspects for only five days without charge, the CND rarely respects the legal procedures for arrest and detention. Following the coup attempt on 22 January, 1992, government forces detained at least twenty rebel soldiers without charging them publicly. As of 4 February, 1992, the government still detained the soldiers incommunicado.

C. Torture:

Article 5 of the African Charter on Human and Peoples' Rights: Every individual shall have the right to the respect and the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

In **Nigeria**, the standards for corporal punishment in prison as described by the Nigerian Prisons Standing Order 342 do not meet the UN Standard Minimum Rules for the Treatment of Prisoners. Even more disturbing is the reality that the level of inhuman treatment in Nigerian prisons extends far beyond even Nigeria's minimal standards. Solitary confinement in cells nearly void of light and ventilation may last for months, "single cells" measuring 1.5 to 2 meters commonly hold between three to five inmates and sometimes up to six in the Onitsha prison, prisoners frequently are chained, sometimes for months, and frequently whipped, kept naked and forced to remain in crouched positions for extensive periods of time. Several students were tortured in 1991, including Chima Okereke, who was detained at SSS Headquarters in Jos where he was chained to cell windows and beaten, and Bunmi Olusona and Bamidele Aturu, who were also beaten. Zakari Ismaila, held in Zaria prison, and Godwin Uwagbale, detained without trial for 955 days at Kirikiri Maximum Security Prison, described incidents of severe overcrowding and torture.

In **Malawi**, the Prisons Act and Prisons Regulations provide for numerous forms of punishment, including corporal punishment, that are forbidden by the UN Standard Minimum Rules for Treatment of Prisoners. And actual practice in prison is far worse than is allowed

even by Malawi's own regulations. Criminal prisoners routinely receive the "hard-core programme" of treatment in which they may be chained naked, severely beaten, left to die from starvation or illness or executed extrajudicially. Women in prison commonly face rape and sexual harassment by prison wardens. Torture of political prisoners also occurs in Malawi. A recent example is Blaise Machira who was kept in leg irons and solitary confinement while suffering from schizophrenia from 1988 to April of 1991.

D. Lack of an independent judiciary:

Article 26 of the African Charter on Human and Peoples' Rights: States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Article 7 (1) of the African Charter on Human and Peoples' Rights: Every individual shall have the right to have his cause heard. This comprises:

(a) The right to an appeal to competent national organs against acts violating fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(c) the right of defence, including the right to be defended by counsel of his choice;

(d) the right to be tried within a reasonable time by an impartial court or tribunal.

Article 7(2) of the African Charter on Human and Peoples' Rights: No one may be condemned for an act or omission which did not constitute a legally punishable act at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

In Tunisia, the government authorizes sentencing by military courts that entirely lack the protection of an independent judiciary. On January 31, 1991, a military court sentenced lawyer Mohammed Nourito to imprisonment for alleged armed plots against the government. It has to be noted that he was neither formally charged nor evidence proving his guilt established.

In the **Sudan**, no independent judiciary exists. Consequently, official abuse occurs with no safeguards. The recent campaign to remove ethnic Nuba from judicial, administrative and security posts is one example of the potential harm that can occur absent judicial protection.

In **Malawi**, "traditional courts" hear criminal and political cases. These courts provide no presumption of innocence, commonly manipulate the rules of evidence and procedure to favour the prosecution, grant no right to counsel, may grant no right to call witnesses and may punish individuals for acts of relatives. Judges are appointed by Life-President Banda, whose opinion highly influences the verdict in important cases.

In **Nigeria**, despite Nigeria's claim to be committed to the Rule of Law, the Constitution Decree No. 1 of 1984 effectively destroyed the Rule of Law by abolishing legislative bodies and vesting the power to make law in the military. Furthermore, Decree No. 13 nullified all civil suits challenging any decree. Cases of armed robbery, treason, corruption, illegal oil sales, drug trafficking and political criticism (of the government's policy of transition to civilian rule) are tried in special tribunals. Special tribunals lack judicial safeguards, such as the presumption of innocence, adequate representation and (in most cases) the opportunity to appeal. Special tribunal sentences tend to be disproportionately harsh and conviction rates very high. Additionally, the existence of special courts weakens the authority of regular courts.

In **Ethiopia**, even though the new government incorporated the Universal Declaration of Human Rights as the supreme law of the land, the existence of "peoples' courts" in the areas of Ethiopia previously controlled by the EPRDF represents a major obstacle to the restoration of a judicial system that would be able to fairly and effectively protect human rights. The peoples' courts lack the independence of judges (since judges are elected by Peoples' Councils), the judges lack expertise, the courts do not provide the presumption of innocence, accused people do not have the right to counsel, sentencing is arbitrary and some courts may allow summary executions. In addition, the absence of a functioning police force prevents prosecutors from obtaining a legal basis for prosecution.

In **Ghana**, the Provisional National Defence Council (PNDC) exercises power over the judiciary. Although a judiciary system exists in Ghana, the judiciary is limited greatly by the PNDC. The PNDC established a "public tribunal" system at the national and regional levels. The public tribunal system commonly by-passes the regular court system. Public tribunals restrict the procedural rights of defendants, are staffed primarily by judges with little legal experience, minimize legal

safeguards to provide quick decisions and are not subject to review by the Superior Court of the Judicature. Further, PNDC Law 2 grants the National Investigations Committee, a quasi-judicial body, the power to investigate allegations referred to it by the PNDC. Other similar quasi-judicial bodies also exist, including the Special Military Tribunal and the Office of Revenue Commissioners. Finally, current statutory rules governing judicial tenure and rules governing judicial appointments also undermine the independence of the judiciary. The PNDC also controls the appointment and discipline of judges.

E. Lack of protection of civilians during armed conflict

Governments have a legal duty to protect civilians according to important safeguards outlined in: Article 2 of the 1949 Geneva Conventions, the entire fourth 1949 Geneva Convention, and the subsequent 1977 Protocol. The responsibility of a government to protect civilians does not make immune from responsibility non-governmental groups that commit criminal violations or crimes against humanity.

In **Uganda**, reports indicate that the National Resistance Army and the rebel forces are both responsible for human rights violations. Human rights violations by government forces include: imprisonment of prisoners of conscience, detention without charge or trial, unfair trial, ill-treatment of prisoners and extrajudicial executions. Human rights violations by rebel forces include abduction, torture and killing.

In **Rwanda**, the government forces and the rebel forces are both responsible for killing unarmed civilians who are suspected opponents or suspected traitors.

In **Senegal**, reports exist of extrajudicial killing in connection to separatist related violence in the Casamance in 1991. Two independent reports indicate that government forces are responsible for beating and killing people in custody and, between January and May of 1991, separatists are reported to have killed at least 17 villagers.

In **Liberia**, the National Patriotic Front of Liberia and Prince Johnson's INPFL both arbitrarily detain civilians. Examples of arbitrary detention practiced by the National Patriotic Front include: incidents occurring on June 12 of 1991 in John Davis Town in which the NPFL captured a woman named Mamie Paye and a Krahn woman whose husband watched her capture; in July, a farmer fleeing Zia Town observed the NPFL capturing women and children, including a pregnant woman, Daganon, and Sarah Kwee. Prince Johnson's INPFL detained a

five-man committee in February of 1991 including A. T. Nah, Johnson Gwaikolo, Ishmael Campbell, J. Khankon Toe and Henry K. Marvie. The men were held hostage and subjected to abusive treatment.

In **Chad**, since January 1, 1992, a minimum of twenty people have been killed by soldiers or armed men in military uniforms. In particular, reports from N'djamena indicate that Joseph Behidi, Vice President of the Chadian Human Rights League, was shot in the head by two soldiers on February 16, 1992. On January 31, 1992, soldiers killed five civilians in retaliation for the death of a soldier.

F. Deportation

Article 12 (3) of the African Charter on Human and Peoples' Rights: Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

Article 12 (4) of the African Charter on Human and Peoples' Rights: A non-national legally admitted on a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision in accordance with the law.

Article 12 (5) of the African Charter on Human and Peoples' Rights: The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

In **Nigeria**, the most egregious recent example of deportation is occurring. Nigerian authorities have arrested no less than 300 Chadians who are now awaiting deportation. The crack-down began in October, 1991 when authorities arrested a large number of Chadians. Additional Chadians were arrested in February of 1992. The Chadians entered Nigeria legally and/or regularized their stay, and most fear persecution upon return to Chad. Nigerian authorities have not informed the Chadians of the reason for their arrest or deportation. The crack-down appears to be connected with growing apprehension by the Chadian government that political exiles and wealthy Chadians who are residents in neighbouring countries have been supporting armed rebel factions.

III. Impunity

Article 30 of the African Charter on Human and Peoples' Rights: An African Commission, hereinafter called the "the Commission",

shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

A primary function of the African Commission on Human and Peoples' is to ensure the protection of human rights in Africa. Unfortunately, however, impunity of human rights violators continues in Africa. Impunity in Africa takes many forms: abuse by government actors who are officially immune from sanction; abuse by people who are granted asylum in other African countries; abuse sanctioned and provided for by law; abuse that is not provided for by law but for which the government fails to investigate or hold those responsible accountable.

In **Nigeria**, Decree No. 9 of 1990 grants immunity from civil and criminal liability to the President, the Vice President and the State Military Governor.

In **Senegal**, the government has granted asylum to Hissein Habre, former ruler of Chad, despite the gross human rights violations that occurred under his government from 1982 to 1990. These violations include the arrest and detention of hundreds of people without charge or trial, torture disappearances, summary and arbitrary executions.

In **Kenya**, the Preservation of Public Security Act makes legal detention without charge. When a person is detained arbitrarily, the perpetrator is legally immune from charge.

In **Togo**, while many of the recent human rights abuses in the country have been examined by the National Human Rights Commission, the government has failed to bring judicial proceedings against any of those responsible for the crimes. Human rights violators are free to act in Togo with impunity, even when their crimes are known publicly.

In the **Ivory Coast**, while a commission of enquiry established by the Ivorian President identified the authors and perpetrators of human rights abuses at the campus of the university at Yopougon, which included rape and torture of students, the government failed to prosecute those responsible. The impunity granted by the government to the violators prompted the mass demonstrations that led initially to the arrest, prosecution and conviction of René Degni Segui, President of the Ivorian League on Human Rights on public order offences.

In **Zambia**, thousands of West African, particularly the Senegalese and the Malians were subjected to mass expulsion. Some,

were tortured. Not only were they deprived of their belongings but also the spouses and children of most of them were compelled to remain in Zambia.

IV. Recommendations

The International Commission of Jurists requests that the Organization of African States consider the following recommendations, some of which were compiled in collaboration with the African Commission on Human and Peoples' Rights and the African Centre for Democracy and Human Rights Studies in October of 1991.

1. Urge the eight states which have not ratified the African Charter on Human and Peoples' Rights to ratify the charter as soon as possible. These states are:

- a. Ethiopia
- b. Ivory Coast
- c. Lesotho
- d. Madagascar
- e. Mauritius
- f. Namibia
- g. Seychelles
- h. Swaziland

2. Encourage African states to take necessary steps to incorporate the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and other relevant international human rights instruments into domestic law.

3. Support and promote the African Commission on Human Rights through instituting the following measures to strengthen the African Commission:

- a. Preserve the independence of the Commission through appointing Commissioners with due regard for the incompatibility of certain government functions with membership of the Commission.

- b. Implement an affirmative action policy and appoint women Commissioners. In particular, appoint a woman to replace Mubanga-Chipoya.

4. Require State parties to the African Charter to submit overdue reports to the Commission in terms of Article 62 of the African Charter.

5. Discuss human rights violations in specific African countries, survey with diligence measures taken by states to deal with the violations, and pass resolutions addressing these issues.

6. Emphasize to state parties the importance of utilizing inter-state complaints as provided for by Article 47 of the African Charter on Human and Peoples' Rights.
